No. 15-1112

Title:	Wells Fargo & Co., et al., Petitioners v. City of Miami, Florida
Docketed:	March 4, 2016
Linked with 15A766	
Lower Ct:	United States Court of Appeals for the Eleventh Circuit
Case Nos.:	(14-14544)
Decision Date:	September 1, 2015
Rehearing Denied:	November 5, 2015

Questions Presented

---Date---	------Proceedings and Orders----------
Jan 21 2016	Application (15A766) to extend the time to file a petition for a writ of certiorari from February 3, 2016 to March 4, 2016, submitted to Justice Thomas.
Jan 25 2016	Application (15A766) granted by Justice Thomas extending the time to file until March 4, 2016.
Mar 4 2016	Petition for a writ of certiorari filed. (Response due April 4, 2016)
Apr 4 2016	Brief amici curiae of American Bankers Association, et al. filed. VIDED.
Apr 4 2016	Brief amicus curiae of The Chamber of Commerce of the United States of America filed. VIDED.
Apr 4 2016	Waiver of right of respondent City of Miami, Florida to respond filed.
Apr 13 2016	DISTRIBUTED for Conference of April 29, 2016.
Apr 20 2016	Response Requested. (Due May 20, 2016)
May 20 2016	Brief of respondent City of Miami, Florida in opposition filed.
May 25 2016	Letter of May 25, 2016, received from counsel for petitioner waiving the 14-day waiting period for the filing of a reply brief pursuant to Rule 15.5.
May 31 2016	DISTRIBUTED for Conference of June 16, 2016.
May 31 2016	Reply of petitioners Wells Fargo & Co., et al. filed. (Distributed)
Jun 17 2016	Letter received pursuant to Rule 29.6, from counsel for the petitioners Wells Fargo & Co., and Wells Fargo Bank, N.A. amending petitioners' corporate disclosure statement. (Distributed)
Jun 20 2016	DISTRIBUTED for Conference of June 23, 2016.
Jun 27 2016	DISTRIBUTED for Conference of June 27, 2016.
Jun 28 2016	Petition GRANTED. The petition for a writ of certiorari in No. 15-1111 is granted. The cases are consolidated and a total of one hour is allotted for oral argument.
Jul 29 2016	The time to file the joint appendix and petitioners' briefs on the merits is extended to and including August 22, 2016. VIDED.
Jul 29 2016	The time to file respondents' brief on the merits is extended to and including September 30, 2016. VIDED.
Aug 18 2016	Consent to the filing of amicus curiae briefs, in support of either party or of neither party, received from counsel for the petitioners.

Aug 18 2016	Consent to the filing of amicus curiae briefs in support of either party or of neither party received from counsel for respondent. VIDED
Aug 22 2016	Brief of petitioners Wells Fargo & Co., et al. filed.
Aug 22 2016	Joint appendix filed. VIDED. (Statement of costs received.)
Aug 29 2016	Brief amici curiae of The Chamber of Commerce of the United States of America, et al. filed. VIDED.
Aug 29 2016	Brief amici curiae of American Bankers Association, et al. filed. VIDED.
Aug 29 2016	Brief amicus curiae of The Cato Institute filed. VIDED.
Aug 29 2016	Brief amicus curiae of DRI-Voice of the Defense Bar filed. VIDED.
Sep 2 2016	SET FOR ARGUMENT On Tuesday, November 8, 2016
Sep 9 2016	Record has been requested from the U.S.C.A. 11th Circuit.
Sep 20 2016	Record received from the U.S.D.C. Southern Dist. of Florida is electronic.
Sep 28 2016	CIRCULATED
Sep 30 2016	Brief of respondent City of Miami, Florida filed. (Distributed)
Oct 7 2016	Brief amicus curiae of NAACP Legal Defense & Educational Fund, Inc. filed. VIDED. (Distributed)
Oct 7 2016	Brief amicus curiae of United States filed. VIDED. (Distributed)
Oct 7 2016	Brief amicus curiae of Constitutional Accountability Center filed. VIDED. (Distributed)
Oct 7 2016	Brief amici curiae of National Association of Counties, et al. filed. VIDED. (Distributed)
Oct 7 2016	Brief amici curiae of Anita Trafficante, et al. filed. VIDED. (Distributed)
Oct 7 2016	Brief amici curiae of AARP and AARP Foundation filed. VIDED. (Distributed)
Oct 7 2016	Brief amici curiae of Fraternal Order of Police, Miami Lodge 20, and Florida Professional Firefighters, Inc. filed. VIDED. (Distributed)
Oct 7 2016	Brief amici curiae of The Lawyers' Committee for Civil Rights Under Law, et al. filed. VIDED. (Distributed)
Oct 7 2016	Brief amici curiae of Asian Americans Advancing Justice I AAJC, et al. filed. VIDED. (Distributed)
Oct 7 2016	Brief amici curiae of The City and County of San Francisco, The City of Los Angeles, and 24 Other Jurisdictions filed. VIDED. (Distributed)
Oct 7 2016	Brief amicus curiae of Urban Historian Leo Hollis filed. (Distributed)
Oct 7 2016	Brief amici curiae of Housing Scholars filed. VIDED. (Distributed)
Oct 7 2016	Motion of the Acting Solicitor General for leave to participate in oral argument as amicus curiae and for divided argument filed. VIDED.
Oct 7 2016	Brief amici curiae of Current and Former Members of Congress filed. VIDED. (Distributed)
Oct 24 2016	Reply of petitioners Wells Fargo & Co., et al. filed. (Distributed)
Oct 28 2016	Motion of the Acting Solicitor General for leave to participate in oral argument as amicus curiae and for divided argument GRANTED. VIDED
Nov 8 2016	Argued. For petitioners: Neal K. Katyal, Washington, D. C. For respondents: Robert S. Peck, Fairfax Station, Va.; and Curtis E. Gannon, Assistant to the Solicitor General, Department of Justice, Washington, D. C. (for United States, as amicus curiae.) VIDED.
Nov 28 2016	Letter of counsel for respondent City of Miami, Florida filed. VIDED. (Distributed)

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No. 15-1112

IN THE
Supreme Court of the United States

WELLS FARGO & CO.
and WELLS FARGO BANK, N.A.,
Petitioners,

v.

CITY OF MIAMI,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

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QUESTIONS PRESENTED

1. Whether the term "aggrieved" in the Fair Housing Act imposes a zone-of-interests requirement more stringent than the injury-in-fact requirement of Article III.

2. Whether the City is an "aggrieved person" under the Fair Housing Act.

PARTIES TO THE PROCEEDING

1. Wells Fargo & Co. and Wells Fargo Bank, N.A., petitioners here, were defendants-appellees in the Court of Appeals.

2. The City of Miami, respondent here, was plaintiff-appellant in the Court of Appeals.

RULE 29.6 DISCLOSURE STATEMENT

1. Wells Fargo & Co. has no parent corporation, and no publicly held company owns 10% or more of Wells Fargo & Co.'s stock.

2. Wells Fargo Bank, N.A.'s parent corporation is Wells Fargo & Co., and Wells Fargo & Co. is a publicly held company that owns 10% or more of Wells Fargo Bank, N.A.'s stock. With the exception of Wells Fargo & Co., no other publicly held company owns 10% or more of Wells Fargo Bank, N.A.'s stock.

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IN THE

Supreme Court of the United States

No. 15-

WELLS FARGO & CO.
and WELLS FARGO BANK, N.A.,
Petitioners,

v.

CITY OF MIAMI,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

Wells Fargo & Co. and Wells Fargo Bank, N.A. (together, Wells Fargo) respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case.

OPINIONS BELOW

The Eleventh Circuit's opinion is reported at 801 F.3d 1258. Pet. App. 1a-19a. The orders of the District Court granting Wells Fargo's motion to dismiss and denying reconsideration are unreported. *Id.* at 72a-73a, 81a-82a.

JURISDICTION

The Eleventh Circuit entered judgment on September 1, 2015, Pet. App. 1a, and denied a timely petition for panel rehearing on November 5, 2015, *id.* at 100a. On January 25, 2016, Justice Thomas extended the time within which to file a petition for a writ of certiorari to and including March 4, 2016. *See* No. 15A766. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The relevant provisions of the Fair Housing Act are reproduced in an appendix to this petition. Pet. App. 101a-103a.

INTRODUCTION

The issue in this case is fundamental to the Fair Housing Act: Who can sue to enforce the statute's anti-discrimination provisions? The text of the FHA authorizes "aggrieved person[s]" to sue. 42 U.S.C. § 3613(a)(1)(A). And in two recent and unanimous decisions construing similar statutes, this Court has addressed what that means. To be an "aggrieved person," it is not enough that a plaintiff "might technically be injured in an Article III sense." *Thompson* v. *N. Am. Stainless, LP*, 562 U.S. 170, 178 (2011). Rather, a plaintiff has a right to sue only if (1) he falls within the zone of interests protected by the statute and (2) his injury was proximately caused by the statutory violation he alleges. *See Lexmark Int'l, Inc.* v *Static Control Components, Inc.*, 134 S. Ct. 1377, 1388-1391 (2014). Under *Thompson* and *Lexmark*, therefore, the answer to the first question presented is plain: The term "aggrieved" in the FHA should be construed to impose a zone-of-interests

requirement more stringent than the injury-in-fact requirement of Article III.

The Eleventh Circuit did not dispute that the logic of *Thompson* and *Lexmark* compels that conclusion. In fact, it acknowledged that this Court's recent precedent "suggests" that the Court today would adopt that very construction. Pet. App. 45a. But the Eleventh Circuit concluded that its hands were tied by three of this Court's decisions from over thirty years ago: *Trafficante* v *Metropolitan Life Insurance Co.*, 409 U.S. 205 (1972); *Gladstone, Realtors* v. *Village of Bellwood*, 441 U.S. 91 (1979); and *Havens Realty Corp.* v *Coleman*, 455 U.S. 363 (1982). *See* Pet. App. 15a. In each of those decisions, this Court stated that the right to sue under the FHA extends as broadly as is permissible under Article III. And in light of those statements, the Eleventh Circuit felt constrained as an inferior court to ignore this Court's more recent pronouncements in *Thompson* and *Lexmark*—even though those two decisions cast "doubt" on the "viability" of the Court's older ones. *Id.* at 39a.

The time is now for this Court to do what the Eleventh Circuit concluded it could not: disavow this Court's decades-old statements about the meaning of "aggrieved" under the FHA. Only this Court can definitively resolve the conflict between its older FHA decisions, on the one hand, and its more recent, unanimous decisions, on the other. And until the Court itself connects those dots, circuits like the Eleventh may believe they have no choice but to reach results contrary to *Thompson* and *Lexmark*. That state of affairs is untenable—especially on an issue as important and pervasive as who can sue under the FHA.

Having decided the first question presented, this Court should answer a second: whether the City is an "aggrieved person" in this case. That question follows logically from the first. Deciding it would promote efficiency and provide much-needed guidance to lower courts in other FHA cases. And the merits of the question are straightforward: The City's asserted economic injuries plainly fall outside the FHA's zone of interests, and were not proximately caused by Wells Fargo's alleged conduct.

For these reasons, this Court should grant certiorari to decide both questions presented.

STATEMENT

1. Title VIII of the Civil Rights Act of 1968, Pub. L. No. 90-284, 82 Stat. 81, commonly known as the Fair Housing Act, prohibits certain types of discrimination in housing. Section 804(b) of the FHA prohibits discrimination in the sale or rental of housing, making it unlawful "[t]o discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin." 42 U.S.C. § 3604(b). Section 805(a) prohibits discrimination in "residential real estate-related transactions," including the "making or purchasing of loans * * * secured by residential real estate." *Id.* § 3605(a), (b)(1). Under § 805(a), "[i]t shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, be-

cause of race, color, religion, sex, handicap, familial status, or national origin." *Id.* § 3605(a).

The FHA authorizes "aggrieved person[s]" to enforce these provisions. *Id.* § 3613(a)(1)(A). Section 813(a)(1)(A) provides: "An aggrieved person may commence a civil action in an appropriate United States district court or State court not later than 2 years after the occurrence or the termination of an alleged discriminatory housing practice * * * to obtain appropriate relief with respect to such discriminatory housing practice or breach." *Id.* The FHA defines an "[a]ggrieved person" to include "any person" who "claims to have been injured by a discriminatory housing practice" or "believes that such person will be injured by a discriminatory housing practice that is about to occur." *Id.* § 3602(i).

2. In 2013, the City of Miami, Florida, sued Wells Fargo, alleging violations of §§ 804(b) and 805(a) of the FHA. Pet. App. 3a. The complaint accused Wells Fargo of engaging in discriminatory lending practices, such as targeting minorities for predatory loans and refusing to extend minorities credit on equal terms. *Id.* at 4a-5a. The City claimed that these alleged practices violated the FHA because they were intentionally discriminatory and had a disparate impact on minorities. *Id.* at 5a.

The City theorized that, as a consequence of Wells Fargo's alleged conduct, it suffered a loss in property-tax revenue: According to the City, the alleged conduct led to more foreclosures, which led to lower property values, which led to less tax revenue. *Id.* at 8a; Compl. ¶¶ 156-170, No. 1:13-cv-24508 (S.D. Fla. Dec. 13, 2013), ECF No. 1. The City also asserted that the foreclosures led to "a variety of

problems, including increased vagrancy, criminal activity, and threats to public health and safety"—which, in turn, led to more spending on municipal services. Compl. ¶ 172. The City thus sought compensatory damages for "lost tax revenues and the need to provide increased municipal services." *Id.* ¶ 189. It also sought an injunction prohibiting Wells Fargo from engaging in discrimination in the future. Pet. App. 8a-9a.

The District Court dismissed the complaint. *Id.* at 82a. It explained that the FHA prohibits discrimination because of race, but that the City had not alleged any injury "affected by a racial interest." *Id.* at 92a (internal quotation marks omitted).[1] Instead, the court found, the City had alleged "merely economic injuries." *Id.* Because the City's claims fell beyond the zone of interests protected by the FHA, the court concluded that the City had no right to bring suit. *Id.* at 93a. The court also held that the City had not adequately alleged that its injuries were proximately caused by Wells Fargo's alleged conduct. *Id.* at 93a-95a.

3. The Eleventh Circuit reversed in an opinion by Judge Marcus.[2] The court began by considering

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[1]The District Court's orders in this case incorporate its orders in a parallel suit brought by the City of Miami against Bank of America. Pet. App. 81a; *see id.* at 83a-99a.

[2]The Eleventh Circuit's opinion in this case incorporates its opinion in the City's parallel suit against Bank of America. Pet. App. 12a; *see id.* at 20a-71a. This petition is being filed concurrently with the petition in that case. Because the petitions present overlapping issues, petitioners in both cases believe the petitions both should be granted. The Court may then wish to consolidate the cases for oral argument.

three "[o]lder Supreme Court cases," Pet. App. 39a: *Trafficante*, 409 U.S. 205; *Gladstone*, 441 U.S. 91; and *Havens*, 455 U.S. 363. The "law of those cases," the Eleventh Circuit explained, "is clear as a bell: '[statutory] standing under [the FHA] extends "as broadly as is permitted by Article III of the Constitution."'" Pet. App. 44a (quoting *Gladstone*, 441 U.S. at 98).

The Eleventh Circuit then turned to two "recent Supreme Court cases," *id.* at 42a, both decided unanimously: *Thompson*, 562 U.S. 170; and *Lexmark*, 134 S. Ct. 1377 In *Thompson*, the Court considered the language of Title VII—language the Eleventh Circuit noted was "nearly identical" to that of the FHA—and "rejected the argument that [it] expanded statutory standing to the limits of Article III." Pet. App. 42a-43a. Rather, to have a right to sue under Title VII, a plaintiff must fall within the zone of interests sought to be protected by the statute. *Id.* at 43a. The Court subsequently reaffirmed in *Lexmark* that the zone-of-interests test "'applies to all statutorily created causes of action.'" *Id.* at 44a (quoting *Lexmark*, 134 S. Ct. at 1388).

The Eleventh Circuit acknowledged that *Thompson* and *Lexmark* "cast some doubt on the broad interpretation of FHA statutory standing in *Trafficante*, *Gladstone*, and *Havens*." *Id.* at 42a. Indeed, the court observed, "the *Thompson* Court's interpretation of Title VII may signal that the Supreme Court is prepared to narrow its interpretation of the FHA in the future." *Id.* at 45a; *see id.* at 15a. "But," the court continued, "that day has not yet arrived, and until it does, our role as an inferior court is to apply the law as it stands, not to read tea leaves." *Id.* at 45a. The Eleventh Circuit thus felt bound by *Traffi-*

cante, *Gladstone*, and *Havens* to conclude that "the term 'aggrieved person' in the FHA sweeps as broadly as allowed under Article III." *Id.* at 16a, 47a. And because the City had "said enough to establish Article III standing," *id.* at 37a; *see id.* at 13a-14a, its suit against Wells Fargo could proceed.

The Eleventh Circuit denied rehearing, and this petition followed.

REASONS FOR GRANTING THE PETITION

I. THIS COURT SHOULD GRANT REVIEW TO DECIDE WHETHER THE TERM "AGGRIEVED" IN THE FAIR HOUSING ACT IMPOSES A ZONE-OF-INTERESTS REQUIREMENT MORE STRINGENT THAN THE INJURY-IN-FACT REQUIREMENT OF ARTICLE III

A. Only This Court Can Definitively Resolve The Fundamental Conflict In Its Own Decisions

There is a fundamental conflict in this Court's decisions regarding the meaning of the term "aggrieved," and only this Court can definitively resolve it.

In a trio of cases decided during the Nixon, Carter, and Reagan Administrations, the Court declared that the term "aggrieved" in the FHA means anyone with Article III standing. *See Havens*, 455 U.S. at 372; *Gladstone*, 441 U.S. at 109; *Trafficante*, 409 U.S. at 209. In each, the Court was squarely confronted with the issue of who could sue under the FHA. And each time, the Court rejected any limits on standing under the FHA. *See Havens*, 455 U.S. at 372; *Gladstone*, 441 U.S. at 109; *Trafficante*, 409

U.S. at 209. As the Court put it in *Havens*, "we [have] held that 'Congress intended standing under [the FHA] to extend to the full limits of Art. III.'" 455 U.S. at 372 (quoting *Gladstone*, 441 U.S. at 103 n.9); *see also Bennett* v. *Spear*, 520 U.S. 154, 165 (1997) (explaining that *Trafficante* "held that standing was expanded to the full extent permitted under Article III").

By contrast, in a recent case involving Title VII, the Court unanimously held that "the term 'aggrieved' must be construed more narrowly than the outer boundaries of Article III." *Thompson*, 562 U.S. at 177. The Court acknowledged that in *Trafficante*, it had "relied upon, and cited with approval, a Third Circuit opinion involving Title VII, which * * * 'concluded that the words used showed "a congressional intention to define standing as broadly as is permitted by Article III of the Constitution."'" *Id.* at 176 (quoting *Trafficante*, 409 U.S. at 209). But the Court explained that any discussion of Title VII in *Trafficante* was "dictum"—and "ill-considered" dictum, at that. *Id.*; *see also id.* ("We think that dictum regarding Title VII was too expansive."). Thus, the Court "decline[d] to follow" *Trafficante*, and noted the "absurd consequences" of allowing "any person injured in the Article III sense" to sue. *Id.* at 176-177 It then construed the term "aggrieved" to impose a zone-of-interests requirement more stringent than the injury-in-fact requirement of Article III. *Id.* at 177-178. The Court reaffirmed this analysis just two Terms ago in *Lexmark*. There, the Court declined to read "broad" statutory language "literally" to "suggest that an action is available to anyone who can satisfy the minimum requirements of Article III." *Lexmark*, 134 S. Ct. at 1388. It then held that

the statutory language incorporated a zone-of-interests limitation narrower than Article III. *Id.* at 1388-1390.

These two sets of decisions cannot be reconciled. The Justices in *Thompson* agreed, without dissent, that a broad interpretation of the term "aggrieved" was "ill-considered" and "absurd." And yet, that is precisely the interpretation embraced by this Court in its older FHA decisions. As the Eleventh Circuit recognized, this Court's more recent decisions cast "doubt" on the "viability" of its older ones, Pet. App. 39a, and even "suggest[] that [the Court] may be prepared" one day "to reconsider" them, *id.* at 15a.

That day should be today. Only this Court can definitively resolve the profound conflict between its older FHA decisions, on the one hand, and its more recent, unanimous judgments in *Thompson* and *Lexmark*, on the other. This Court has admonished that, "[i]f a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions." *Rodriguez de Quijas* v. *Shearson/Am. Express, Inc.*, 490 U.S. 477, 484 (1989). Given that admonishment, courts of appeals may feel bound to follow the Court's older, "ill-considered" FHA decisions, no matter how much *Thompson* and *Lexmark* have undermined them.

Indeed, every circuit, including the Eleventh, to have considered the issue post-*Thompson* has continued to follow this Court's older FHA decisions. *See* Pet. App. 15a-16a; *Anderson Grp., LLC* v. *City of Saratoga Springs*, 805 F.3d 34, 44 (2d Cir. 2015);

L&F Homes & Dev., LLC v. *City of Gulfport*, 538 F App'x 395, 400 (5th Cir. 2013) (per curiam); *Hollis* v. *Chestnut Bend Homeowners Ass'n*, 760 F.3d 531, 544 (6th Cir. 2014); *Equal Rights Ctr.* v. *Post Props., Inc.*, 633 F.3d 1136, 1138 (D.C. Cir. 2011). No court of appeals has gone the other way.

Allowing the issue to percolate further in the courts of appeals would thus serve little purpose. Percolation makes sense when the circuits might come to "diverse opinions," helping this Court reach a "better informed" decision. *Arizona* v. *Evans*, 514 U.S. 1, 23 n.1 (1995) (Ginsburg, J., dissenting). But there is little chance of that happening here, since the circuits may feel compelled to follow this Court's older FHA decisions. *See Tex. Dep't of Hous. & Cmty. Affairs* v. *Inclusive Cmtys. Project, Inc.*, 135 S. Ct. 2507 (2015) (granting certiorari to decide whether disparate-impact claims could be brought under the FHA, after the circuits had uniformly concluded, in light of *Griggs* v. *Duke Power Co.*, 401 U.S. 424 (1971), that they could be). Moreover, this Court has already staked out both sides of the issue—in its older FHA cases, on the one hand, and in *Thompson* and *Lexmark*, on the other. No circuit, therefore, is going to come to the issue with fresh eyes; a circuit is going to only pick which set of this Court's decisions to follow. And that sort of percolation—involving nothing more than the choosing of sides—will not help this Court reach a "better informed" decision on the merits.

The time is now for this Court to intervene. The question presented is ultimately one only this Court can answer, for only this Court can definitively resolve a conflict in its own decisions. This Court regularly grants certiorari to decide the validity of an

older decision in light of more recent precedent. *See, e.g.*, *Hurst* v. *Florida*, 136 S. Ct. 616, 620-621, 623-624 (2016) (assessing the validity of older decisions upholding a State's capital sentencing scheme in light of more recent Sixth Amendment cases); *McDonald* v *City of Chicago*, 561 U.S. 742, 758-759 (2010) (assessing the validity of nineteenth-century decisions regarding the applicability of the Second Amendment to the States in light of more recent cases adopting a "selective incorporation" theory); *Leegin Creative Leather Prods., Inc.* v. *PSKS, Inc.*, 551 U.S. 877, 887-889 (2007) (assessing the validity of an older decision establishing a *per se* rule of antitrust liability in light of more recent cases); *Bowles* v. *Russell*, 551 U.S. 205, 213-214 (2007) (assessing the validity of an older decision excusing the untimely filing of a notice of appeal in light of more recent cases). The Court should do the same here without delay.

B. The Ruling Below Cannot Be Reconciled With This Court's Recent And Unanimous Decisions

Certiorari should be granted for another reason: In light of this Court's recent decisions, the ruling below is plainly wrong.

As the decision below acknowledged, this Court's unanimous judgment in *Thompson* "suggests as much." Pet. App. 45a. Like the FHA, Title VII authorizes an "aggrieved" person to bring a civil action to enforce the statute. 42 U.S.C. § 2000e-5(f)(1). And in considering the meaning of that term in Title VII, the Court held that it "must be construed more narrowly than the outer boundaries of Article III." *Thompson*, 562 U.S. at 177 The Court

therefore construed "aggrieved" to incorporate a zone-of-interests test, which excludes plaintiffs "whose interests are unrelated to the statutory prohibitions." *Id.* at 178.

There is no reason to think that Congress intended the same term to have a different meaning in the FHA. When two statutes use the same language for a similar purpose, that is "a strong indication that [they] should be interpreted *pari passu*"—*i.e.*, in the same way. *Northcross* v. *Bd. of Educ. of Memphis City Schs.*, 412 U.S. 427, 428 (1973) (per curiam). The Court affirmed this point in *Thompson*. *See* 562 U.S. at 177 ("We see no reason why the same phrase in Title VII should be given a narrower meaning [than in the FHA]."). And it reaffirmed it just last Term, when it relied on similarities between Title VII and the FHA in giving the two statutes a similar construction. *See Inclusive Cmtys.*, 135 S. Ct. at 2519. Those similarities, the Court held, were "all the more compelling given that Congress passed the FHA in 1968—only four years after passing Title VII." *Id.* As the Court explained, "cases interpreting Title VII * * * provide essential background and instruction" for interpreting the FHA. *Id.* at 2518. Especially given that the relevant text here is the same in both statutes, Title VII should not be interpreted one way and the FHA another.

The Court in *Thompson*, moreover, explained that "[i]f any person injured in the Article III sense by a Title VII violation could sue, absurd consequences would follow." 562 U.S. at 176-177 The same is true under the FHA. The Court in *Thompson* thought it would be "absurd" to allow a shareholder "to sue a company for firing a valuable employee for racially discriminatory reasons, so long as he could show that

the value of his stock decreased as a consequence." *Id.* at 177 But allowing anyone with Article III standing to sue under the FHA would produce a similar absurdity: A shareholder could sue Wells Fargo for engaging in allegedly discriminatory lending practices, "so long as he could show that the value of his stock decreased as a consequence." *Id.* A broad interpretation of "aggrieved" is just as "ill-considered" under the FHA as it is under Title VII. *Id.* at 176.

The Court's recent 9-to-0 decision in *Lexmark* only confirms that conclusion. At issue in *Lexmark* was the Lanham Act, which authorizes suit by "any person who believes that he or she is or is likely to be damaged" by a defendant's false advertising. 15 U.S.C. § 1125(a)(1). "Read literally," the Court acknowledged, "that broad language might suggest that an action is available to anyone who can satisfy the minimum requirements of Article III." *Lexmark*, 134 S. Ct. at 1388. But the Court concluded that the statute "should not get such an expansive reading." *Id.* (internal quotation marks omitted). Instead, the Court held, the availability of a right to sue under the statute should be limited by "two relevant background principles": "zone of interests and proximate causality." *Id.*

There are no grounds for a different outcome here. This Court should grant certiorari and hold that "aggrieved" in the FHA should be construed to impose a zone-of-interests requirement more stringent than the injury-in-fact requirement of Article III, expressly disavowing its contrary statements in *Trafficante*, *Gladstone*, and *Havens*.

C. This Case Is An Ideal Vehicle For Deciding This Important And Recurring Question

Finally, certiorari should be granted because this case presents the perfect opportunity to decide this important and recurring issue. Wells Fargo pressed the issue below. *See* Wells Fargo C.A. Br. 14-29. Both the District Court and the Court of Appeals squarely decided it. *See* Pet. App. 15a-16a, 81a-82a, 89a-93a. And the issue is outcome-determinative: If the term "aggrieved" imposes a zone-of-interests limitation narrower than Article III, the City's FHA claims would have to be dismissed, for reasons explained in Part II below.

This petition is thus an ideal vehicle for deciding the question. And there can be no doubt that the question is a significant one. Whether a plaintiff is "aggrieved" within the meaning of the FHA is a threshold issue in every case arising under the statute. *See* 42 U.S.C. §§ 3610(a)(1)(A)(i), 3613(a)(1)(A). Because the meaning of "aggrieved" determines whether a plaintiff can even bring suit in the first place, the practical consequences of the issue are enormous. This Court should seize this opportunity to decide this important and recurring issue.

II. THIS COURT SHOULD GRANT REVIEW TO DECIDE WHETHER THE CITY IS AN "AGGRIEVED PERSON" UNDER THE FAIR HOUSING ACT

A. Deciding This Question Would Promote Efficiency And Provide Much-Needed Guidance To The Lower Courts

If this Court holds that "aggrieved" should be construed to impose a zone-of-interests requirement more stringent than Article III, it should proceed to decide a second question: whether the City is an "aggrieved person" under the FHA. Answering this second, related question would serve two important purposes.

First, this additional question is "sufficiently connected to the ultimate disposition of the case" that deciding it would promote "the efficient administration of justice." *City & Cty. of San Francisco* v *Sheehan*, 135 S. Ct. 1765, 1779 (2015) (Scalia, J., concurring in part and dissenting in part); *see also Coolidge* v. *New Hampshire*, 403 U.S. 443, 484 (1971) (deciding a "second substantial question" to promote "the efficient administration of justice"). Even if "aggrieved" should be construed to impose a zone-of-interests limitation narrower than Article III, a court would still have to decide whether the City was "aggrieved." By deciding that question here, the Court would eliminate any need for consideration of it on remand; and if the Court concluded that the answer was no, there would be no need for further proceedings under the FHA at all.

Second, resolving this additional question would provide much-needed guidance to lower courts across the country. *See Air Wis. Airlines Corp.* v. *Hoeper*,

134 S. Ct. 852, 863 n.4 (2014) (relying on "the need for clear guidance" to lower courts as a "prudential consideration" "weigh[ing] in favor" of deciding an issue). An answer to the first question would establish the limits of the term "aggrieved." But without an answer to the second, there could be lingering uncertainty about whom those narrower limits exclude. Deciding whether the City may sue based on its allegations here would help "clarify the law," *Sheehan*, 135 S. Ct. at 1774, especially given the large number of similar FHA suits pending in the lower courts. *See City of Los Angeles* v *Wells Fargo & Co.*, No. 15-56157 (9th Cir. appeal docketed July 29, 2015); *City of Los Angeles* v. *Bank of Am. Corp.*, No. 15-55897 (9th Cir. appeal docketed June 10, 2015); *County of Cook* v *Wells Fargo & Co.*, No. 1:14-cv-9548 (N.D. Ill. filed Nov. 28, 2014); *County of Cook* v *Bank of Am. Corp.*, No. 1:14-cv-2280 (N.D. Ill. filed Mar. 31, 2014); *County of Cook* v. *HSBC N. Am. Holdings Inc.*, No. 1:14-cv-2031 (N.D. Ill. filed Mar. 21, 2014); *City of Miami Gardens* v. *Wells Fargo & Co.*, No. 1:14-cv-22203 (S.D. Fla. filed June 13, 2014); *DeKalb Cty.* v. *HSBC N. Am. Holdings Inc.*, No. 1:12-cv-3640 (N.D. Ga. filed Oct. 18, 2012).

To promote efficiency and provide guidance, this Court routinely decides a legal question and then applies the law to the facts of the case before it. *See, e.g.*, *Filarsky* v. *Delia*, 132 S. Ct. 1657, 1667 (2012). In both *Thompson* and *Lexmark*, the Court did precisely that: It held that the statute should be construed more narrowly than Article III, and then decided whether the plaintiff fell within those limits. *Lexmark*, 134 S. Ct. at 1393-1395; *Thompson*, 562

U.S. at 178. The Court should follow the same course here and decide both questions presented.[3]

B. The Merits Of The Question Are Straightforward

The merits of the second question should not detain this Court for long. The term "aggrieved" is narrower than Article III in two respects. First, as explained above on pp. 12 to 14, the term "extends only to plaintiffs whose interests fall within the zone of interests protected by the law invoked." *Lexmark*, 134 S. Ct. at 1388 (internal quotation marks omitted); *see also Thompson*, 562 U.S. at 177-178. And second, it "is limited to plaintiffs whose injuries are proximately caused by violations of the statute." *Lexmark*, 134 S. Ct. at 1390.

The City satisfies neither of these requirements. Thus, it is not an "aggrieved person" under the FHA.

1. Consider first the zone-of-interests requirement, which limits the type of injuries cognizable under the FHA. To have a right to enforce the statute, it is not enough that the plaintiff "might technically be injured in an Article III sense." *Thompson*, 562 U.S. at 178. Rather, the plaintiff must show that his interests "fall within the zone of interests protected by the law invoked." *Lexmark*, 134 S. Ct. at 1388 (internal quotation marks omitted). This test forecloses suit "when a plaintiff's interests are so marginally related to or inconsistent with the purposes implicit in the statute that it cannot reasonably be

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[3] The second question presented follows so directly from the first that it is "fairly included therein." S. Ct. R. 14.1(a). Out of an abundance of caution, however, this petition also includes it as a separate question.

assumed that Congress authorized that plaintiff to sue." *Id.* at 1389 (internal quotation marks omitted).

Identifying the interests protected by the FHA "requires no guesswork." *Id.* The FHA is an *anti-discrimination* statute. Its purpose is to "broadly prohibit[] discrimination in housing throughout the Nation." *Gladstone*, 441 U.S. at 93. To that end, the FHA prohibits discrimination on the basis of race, national origin, and other protected categories in various housing-related transactions. *See* 42 U.S.C. §§ 3604-3606. An "aggrieved person," moreover, is defined in terms of his connection to such discrimination—namely, as a person who claims to have been (or believes he will be) injured by a "discriminatory housing practice." *Id.* § 3602(i); *see also Air Courier Conference of Am.* v. *Am. Postal Workers Union AFL-CIO*, 498 U.S. 517, 523-524 (1991) (considering the "particular language of the statute[]" to discern the zone of interests).

Thus, to come within the FHA's zone of interests, a plaintiff must seek redress under the statute for an injury to an interest in *non-discrimination*. Tenants of an apartment complex in *Trafficante*, for example, sought relief for the "loss of important benefits from interracial associations." 409 U.S. at 210. A village in *Gladstone* sought relief for harm to its "racial composition" resulting from "an integrated neighborhood" turning into "a segregated one." 441 U.S. at 110. And a nonprofit corporation in *Havens* sought relief for injury to its efforts to secure "equal access to housing." 455 U.S. at 379. Each of those plaintiffs had an interest in nondiscrimination as an end in itself, and sought relief for injury to that interest caused by the defendants' conduct. *See Thompson*, 562 U.S. at 176 (explaining that the holdings of the

older FHA cases "are compatible with the 'zone of interests' limitation").

By contrast, a plaintiff who alleges injury to only *economic* interests falls outside the zone protected by the FHA. This Court's decision in *Thompson* makes this clear. There, the Court rejected the notion that a shareholder could bring a Title VII suit against a company for "firing a valuable employee for racially discriminatory reasons, so long as he could show that the value of his stock decreased as a consequence." *Thompson*, 562 U.S. at 177. What made such a suit "absurd" in the eyes of the Court was the nature of the shareholder's interest. *Id.* at 176-177. The Court's point was that when the plaintiff's only interest is *economic*, he should not be considered "aggrieved" within the meaning of a statute concerning *discrimination*.

In this case, the City has alleged only two injuries: "lost tax revenues and the need to provide increased municipal services." Compl. ¶ 189. As the District Court found, both injuries are "merely economic." Pet. App. 92a. Thus, for the same reason the shareholder's suit in *Thompson* was absurd, the City's suit here must fail: The interest allegedly at stake is "so marginally related" to the purposes of the statute "that it cannot reasonably be assumed that Congress authorized that plaintiff to sue." *Lexmark*, 134 S. Ct. at 1389 (internal quotation marks omitted). Absent an interest in non-discrimination itself, the City is not an "aggrieved person" under the FHA.

2. Consider also the proximate cause requirement, which demands a "sufficiently close connection" between the plaintiff's injury and the statutory violation. *Id.* at 1390. While Article III requires that

the injury be "fairly traceable" to the violation, *id.* at 1386, the statutory term "aggrieved" requires more: that the injury be "proximately caused" by the violation, *id.* at 1390. "Put differently, the proximate-cause requirement generally bars suits for alleged harm that is 'too remote' from the defendant's unlawful conduct." *Id.*

That is the case here. The City's asserted injuries—"lost tax revenues and the need to provide increased municipal services," Compl. ¶ 189—did not flow directly from Wells Fargo's alleged discriminatory lending practices. Rather, according to the complaint itself, the causal chain contained a number of intervening links, supposedly connecting the alleged practices to the foreclosures, the foreclosures to the lower property values, and (finally) the lower property values to the lost tax revenue. Pet. App. 8a; Compl. ¶¶ 156-170. Even accepting the allegations in the complaint as true, therefore, the City's injuries were simply too remote from Wells Fargo's alleged practices to have been proximately caused by them.[4]

In short, the City's asserted injuries do not fall within the FHA's zone of interests, and were not proximately caused by the alleged statutory violations. Because the City is not an "aggrieved person," it has no right to sue under the statute. The Court

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[4]The Eleventh Circuit in this case concluded that "a private cause of action under the FHA contains a proximate cause requirement," even while acknowledging that that "may be in some tension with the Supreme Court's general holding that statutory standing under the FHA extends as broadly as permitted under Article III." Pet. App. 50a n.8. The Eleventh Circuit then held—erroneously—that the City had sufficiently alleged the existence of proximate cause. *Id.* at 16a, 47a-58a.

should agree to decide the merits of this straightforward issue.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 14-14544

D.C. Docket No. 1:13-cv-24508-WPD

CITY OF MIAMI,
a Florida municipal corporation,
Plaintiff Appellant,

versus

WELLS FARGO & CO.,
WELLS FARGO BANK, N.A.,
Defendants Appellees.

Appeals from the United States District Court
for the Southern District of Florida

(September 1, 2015)

Before MARCUS and WILSON, Circuit Judges, and SCHLESINGER,* District Judge.

MARCUS, Circuit Judge:

On December 13, 2011, the City of Miami brought three separate fair housing lawsuits against Wells Fargo, Bank of America, and Citigroup. Each alleged that the bank in question had engaged in a decade-long pattern of discriminatory lending by

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*Honorable Harvey E. Schlesinger, United States District Judge for the Middle District of Florida, sitting by designation.

targeting minorities for predatory loans. The complaints in each case were largely identical, each identifying the same pattern of behavior and supported by empirical data specific to each defendant. Moreover, each complaint contained the same two causes of action: one claim arising under the Fair Housing Act (FHA), 42 U.S.C. § 3601 et seq., as well as an attendant unjust enrichment claim under Florida law.

The three cases were heard by the same judge in the Southern District of Florida, and were resolved in the same way based on the district court's order in the Bank of America case. In this case, like the others, the district court dismissed the City's FHA claim with prejudice on three grounds: the City lacked statutory standing under the FHA because its alleged injuries fell outside the statute's "zone of interests"; the City had not adequately pled that Wells Fargo's conduct proximately caused the harm sustained by the City; and, finally, the City had run afoul of the statute of limitations and could not employ the continuing violation doctrine. Each of the three cases was appealed separately

After thorough review, we are constrained to disagree with the district court's legal conclusions about the City's FHA claims. The most detailed account of our reasoning is set out in the companion case City of Miami v. Bank of America Corp., No. 14-14543. The same conclusions of law apply here. As a preliminary matter, we find that the City has constitutional standing to pursue its FHA claims. Furthermore, under controlling Supreme Court precedent, the "zone of interests" for the Fair Housing Act extends as broadly as permitted under Article III of the Constitution, and therefore

encompasses the City's claim. While we agree with the district court's conclusion that the FHA contains a proximate cause requirement, we find that the City has adequately alleged proximate cause. Finally, the "continuing violation doctrine" would apply to the City's claims, if they are adequately pled.

Because the district court imposed too stringent a zone of interests test and wrongly applied the proximate cause analysis, it erred in dismissing the City's federal claims with prejudice and in denying the City's motion for leave to amend on the grounds of futility. As for the state law claim, we affirm the dismissal because the benefits the City allegedly conferred on the defendants were not sufficiently direct to plead an unjust enrichment claim under Florida law.

I.

On December 13, 2013, the City of Miami brought this complex civil rights action in the United States District Court for the Southern District of Florida against Wells Fargo & Co. and Wells Fargo Bank, N.A. (collectively "Wells Fargo" or "the Bank") containing two claims. First, it alleged that the defendants violated sections 3604(b)[1] and 3605(a)[2] of

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[1]42 U.S.C. § 3604(b) makes it unlawful "[t]o discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin."

[2]"It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, handicap, familial status, or national origin." 42 U.S.C.

the Fair Housing Act by engaging in discriminatory mortgage lending practices that resulted in a disproportionate and excessive number of defaults by minority homebuyers and caused financial harm to the City. Complaint for Violations of the Federal Fair Housing Act at 60, City of Miami v. Wells Fargo & Co., No. 13-24508-CIV (S.D. Fla. July 9, 2014) ("Complaint"). It also alleged that the Bank unjustly enriched itself by taking advantage of "benefits conferred by the City" while, at the same time, engaging in unlawful lending practices, which "denied the City revenues it had properly expected through property and other tax payments and cost[] the City additional monies for services it would not have had to provide . . absent [the Bank's] unlawful activities." Id. at 61.

This complaint accused Wells Fargo of engaging in both "redlining" and "reverse redlining." Redlining is the practice of refusing to extend mortgage credit to minority borrowers on equal terms as to non-minority borrowers. Reverse redlining is the practice of extending mortgage credit on exploitative terms to minority borrowers. Id. at 3. The City alleged that the bank engaged in a vicious cycle: first it "refused to extend credit to minority borrowers when compared to white borrowers," then "when the Bank did extend credit, it did so on predatory terms." Id. at 4. When minority borrowers then attempted to refinance their predatory loans, they "discover[ed] that [the Bank] refused to extend credit at all, or on

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§ 3605(a). A "residential real estate-related transaction" includes "[t]he making or purchasing of loans for purchasing, constructing, improving, repairing, or maintaining a dwelling; or secured by residential real estate." Id. § 3605(b)(1).

equal terms as refinancing similar loans issued to white borrowers." Id. at 5.

The City claimed that this pattern of providing more onerous loans -- i.e., those containing more risk, carrying steeper fees, and having higher costs -- to black and Latino borrowers (as compared to white borrowers of identical creditworthiness) manifested itself in the Bank's product placements and its wholesale mortgage broker fees. Id. at 17-26. It also averred that the Bank's internal loan officer and broker compensation systems encouraged its employees to give out these types of loans even when they were not justified by the borrower's creditworthiness. See id. at 19-20, 31-32.

The City said that the Bank's conduct violated the Fair Housing Act in two ways. First, the Bank intentionally discriminated against minority borrowers by targeting them for loans with burdensome terms. Id. at 35-40. And second, the Bank's conduct had a disparate impact on minority borrowers, resulting in a disproportionate number of foreclosures on minority-owned properties, and a disproportionate number of exploitative loans in minority neighborhoods. Id. at 27-35.

The City employed statistical analyses to draw the alleged link between the race of the borrowers, the terms of the loans, and the subsequent foreclosure rate of the underlying properties. Drawing on data reported by the Bank about loans originating in Miami from 2004-2012, the City claimed that a Wells Fargo loan in a predominantly (greater than 90%) minority neighborhood of Miami was 6.975 times more likely to result in foreclosure than such a loan in a majority-white neighborhood. Id. at 47.

According to the City's regression analysis (which purported to control for objective risk characteristics such as credit history, loan-to-value ratio, and loan-to-income ratio), a black Wells Fargo borrower in Miami was 4.321 times more likely to receive a loan with "predatory" features[3] than a white borrower, and a Latino borrower was 1.576 times more likely to receive such a loan. Id. at 6. Moreover, black Wells Fargo borrowers with FICO scores over 660 (indicating good credit) in Miami were 2.572 times more likely to receive a predatory loan than white borrowers, while a Latino borrower was 1.875 times more likely to receive such a loan. Id.

The City's data also suggested that from 2004-2012, 11.1% of loans made by Bank of America to black and Latino customers in Miami were high-cost, compared to just 3.2% of loans made to white customers. Id. at 41. Data cited in the complaint showed significantly elevated rates of foreclosure for loans in minority neighborhoods. While 50.5% of Wells Fargo's Miami loan originations were in "census tracts" that are at least 75% black or Latino, 63.9% of loan originations that had entered foreclosure by June 2013 were from such census tracks. Id. at 46. Likewise, 24.3% of Wells Fargo's loans in predominantly black or Latino

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[3]The City identified as "predatory" those loans containing features such as high-cost loans (i.e., those with an interest rate that was at least three percentage points above a federally established benchmark), subprime loans, interest-only loans, balloon payment loans, loans with prepayment penalties, negative amortization loans, no documentation loans, and adjustable rate mortgages with teaser rates (i.e., a lifetime maximum rate greater than the initial rate plus 6%). Complaint at 40-41.

neighborhoods resulted in foreclosure, compared to only 4.4% of its loans in non-minority (at least 50% white) neighborhoods. Id. at 47.

The complaint also alleged that the bank's loans to minorities resulted in especially quick foreclosures.[4] The average time to foreclosure for Wells Fargo's black and Latino borrowers was 2.996 years, while for white borrowers it was 3.266 years. Id. at 49. The City also gathered data from various non-Miami-based studies (some nationwide, some based on case studies in other cities) to demonstrate the elevated prevalence of foreclosure, predatory loan practices, and higher interest rates among black and Latino borrowers, and the foreseeability of foreclosures arising from predatory lending practices and their attendant harm. Id. at 27-31.

The City's charges were further amplified by the statements of several confidential witnesses who claimed that the Bank deliberately targeted black and Latino borrowers for predatory loans. For example, one former loan officer attested that Wells Fargo management steered low- and middle-income borrowers away from less expensive Community Reinvestment Act loans and toward more expensive Fair Housing Act and Freddie Mac loans. Id. at 36. Another claimed that the Bank targeted minority churches and their congregations for subprime loans.

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[4]A joint report from the Department of Housing and Urban Development and the Department of the Treasury noted that time to foreclosure is an important indicator of predatory practices: "[t]he speed with which the subprime loans in these communities have gone to foreclosure suggests that some lenders may be making mortgage loans to borrowers who did not have the ability to repay those loans at the time of origination." Complaint at 50.

Id. at 37 A third claimed that Hispanic borrowers' applications for refinancing were disproportionately denied: "a Rodriguez in the last name was treated differently than a Smith," he stated. Id. at 39. The witness also claimed that loan officers would not fully inform low- and middle-income Hispanic customers of the financial repercussions of their mortgages, and would submit false documents that exaggerated the borrowers' incomes in order to place them in loans that they should not have qualified for. Id. at 40. One witness also alleged that the Bank would change its paperwork to disguise which branches were originating loans to minorities in order to avoid federal scrutiny. Id. at 39-40.

The City sought damages based on reduced property tax revenues. Id. at 52. It claimed that the Bank's lending policies caused minority-owned property to fall into unnecessary or premature foreclosure. The foreclosed-upon properties lost substantial value and, in turn, decreased the value of the surrounding properties, thereby depriving the City of property tax revenue. Id. at 52-53. The City alleged that "Hedonic regression" techniques could be used to quantify the losses the City suffered that were attributable to the Bank's conduct. Id. at 53-55. The City also sought damages based on the cost of the increased municipal services it provided to deal with the problems attending the foreclosed and often vacant properties -- including police, firefighters, building inspectors, debris collectors, and others. These increased services, the City claimed, would not have been necessary if the properties had not been foreclosed upon due to the Bank's discriminatory lending practices. Id. at 55-57 The City also sought a declaratory judgment

that the Bank's conduct violated the FHA, an injunction barring the Bank from engaging in similar conduct, and punitive damages, as well as attorneys' fees. Id. at 62.

On July 9, 2014, the district court granted defendants' motion to dismiss, adopting and incorporating its order from the companion case between the City of Miami and Bank of America. First, the court found that the City of Miami lacked statutory standing to sue under the FHA. The court determined that, based on this Court's earlier opinion in Nasser v. City of Homewood, 671 F.2d 432 (11th Cir. 1982), the City's claim fell outside the FHA's "zone of interests," and, therefore, the City lacked standing to sue. In particular, the trial court determined that the City had alleged "merely economic injuries" that were not "affected by a racial interest." Like the plaintiffs in Nasser, the court suggested, the City was seeking redress under the FHA for "an economic loss from a decrease in property values," and as with the plaintiffs in Nasser, this was insufficient. The City's goal went far beyond the purpose of the FHA, which is to "provide, within constitutional limitations, for fair housing throughout the United States." City of Miami v. Bank of America Corp., No. 13-24506-CIV, 2014 WL 3362348, at *4 (S.D. Fla. July 9, 2014) (quoting 42 U.S.C. § 3601).

The court also concluded that the FHA contains a proximate cause requirement, but that the City had not adequately pled proximate cause. The City had not sufficiently traced any lending disparities to the defendants' conduct, as opposed to confounding background variables such as "a historic drop in home prices and a global recession," and "the

decisions and actions of third parties, such as loan services, government entities, competing sellers, and uninterested buyers." Id. at *5. The court also determined that the City had not shown that the Bank's mortgage practices caused the City any harm. It was unimpressed with the "statistics and studies" the City cited, noting that some were not based on data from Miami, some were not limited to the defendants' practices, and others "d[id] not control for relevant credit factors that undoubtedly affect lending practices." Id. Moreover, some of the harm to the City stemmed directly from "the actions of intervening actors such as squatters, vandals or criminals that damaged foreclosed properties." Id.

The district court also concluded that the City's federal claim ran afoul of the statute of limitations. It noted that for the FHA, a plaintiff must bring his claim "not later than 2 years after the occurrence" of the discriminatory housing practice, and that for discriminatory loans the statute of limitations begins to run from the date of the loan closing. But the City had not alleged that any loans were made later than 2008, a full five years before its complaint was filed. The court was not persuaded by the City's invocation of the continuing violation doctrine -- which can allow plaintiffs, under some circumstances, to sue on an otherwise time-barred claim -- since the City had not alleged sufficient facts to support any claim that the specific practices continued into the statutory period. The district court dismissed the City's FHA claim with prejudice, reasoning that even if the statute of limitations deficiencies could be cured by an amended pleading, the City's lack of statutory standing could not be.

Finally, the district court rejected the City's unjust enrichment claim on several grounds. As a preliminary matter, the City had failed to draw the necessary causal connection between the Bank's alleged discriminatory practices and its receipt of undeserved municipal services. Moreover, the City had failed to allege basic elements of an unjust enrichment claim under Florida law. The court determined that any benefit the Bank received from municipal services was not direct but "derivative" and, therefore, insufficient to support an unjust enrichment claim. Moreover, the City had failed to allege that the Bank was not otherwise entitled to those services as a Miami property owner. Finally, the court rejected the City's argument that Miami was forced to pay for the Bank's externalities (the costs of the harm caused by its predatory lending), holding that paying for externalities cannot sustain an unjust enrichment claim. The unjust enrichment claim was dismissed without prejudice, leaving the City free to amend its complaint.

The City chose not to proceed on its unjust enrichment claim alone "because the two claims are so intimately entwined and based on largely the same underlying misconduct." Instead, it moved for reconsideration and for leave to file an amended complaint, arguing that it had standing under the FHA and that the amended complaint would cure any statute of limitations deficiency. The proposed amended complaint alleged that the Bank's discriminatory lending practices "frustrate[] the City's longstanding and active interest in promoting fair housing and securing the benefits of an integrated community," thereby "directly interfer[ing]" with one of the City's missions. First

Amended Complaint for Violations of the Federal Fair Housing Act at 44, City of Miami v. Wells Fargo & Co., No. 13-24508-CIV (S.D. Fla. Sept. 9, 2014) ("Amended Complaint"). It also made more detailed allegations about properties that had been foreclosed upon after being subject to discriminatory loans. Specifically, the proposed amended complaint identified ten foreclosed properties that corresponded to predatory loans that originated between 2004 and 2012. Id. at 49. Notably, it also identified 11 properties[5] that corresponded to predatory loans that the Bank had issued after December 13, 2011 (within two years of filing the suit) that had not yet been foreclosed upon but were likely to "eventually enter the foreclosure process," based on expert analysis. Id. at 49-50.

The district court denied the City's motion for reconsideration and for leave to amend, as it did in each of the companion cases, relying upon its reasoning in the Bank of America case.

The City timely appealed the court's final order of dismissal.

II.

As explained, our reasoning is set forth in detail in the companion case Bank of America Corp., No. 14-14543. Our legal conclusions in that case apply equally here, and dictate the same results. We briefly summarize those conclusions.

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[5]Those addresses are: 2172 NW 17th St., Unit 74, 33125; 1000 NW 32nd Ct., 33125; 2011 NW 3rd St., 33125; 260 NW 58th Ct., 33126; 260 SW 27th Rd., 33129; 2635 SW 25th Ave., 33133; 3241 Oak Ave., 33133; 1798 SW 3rd St., 33135; 2725 SW 6th St., 33135; 1399 NW 51st St., 33142; and 1544 NW 34th St., 33142. Amended Complaint at 49-50.

A. Standard of Review

We review the district court's grant of a motion to dismiss with prejudice de novo, "accepting the [factual] allegations in the complaint as true and construing them in the light most favorable to the plaintiff." Mills v. Foremost Ins. Co., 511 F.3d 1300, 1303 (11th Cir. 2008) (quotation omitted). We generally review the district court's decision to deny leave to amend for an abuse of discretion, but we will review de novo an order denying leave to amend on the grounds of futility, because it is a conclusion of law that an amended complaint would necessarily fail. Hollywood Mobile Estates Ltd. v. Seminole Tribe of Fla., 641 F.3d 1259, 1264 (11th Cir. 2011). Finally, we review de novo whether plaintiffs have Article III standing. Ga. Latino Alliance for Human Rights v. Governor of Ga., 691 F.3d 1250, 1257 (11th Cir. 2012).

B. Fair Housing Act Claim

1. Article III Standing

For the reasons we set forth in Bank of America Corp., No. 14-14543, the City has constitutional standing to bring its FHA claim. Just as in that case, the City here claims injury on the basis of lost property tax revenue due to premature or unnecessary foreclosure resulting from predatory loans. In Gladstone Realtors v. Village of Bellwood, 441 U.S. 91 (1979), the Supreme Court held that a village had Article III standing to bring an FHA claim for discriminatory renting practices partly on the basis of "[a] significant reduction in property values," because such a reduction "directly injures a municipality by diminishing its tax base, thus threatening its ability to bear the costs of local

government and to provide services." Id. at 110-11. The City of Miami alleges the same kind of injury here. Thus, like the Village of Bellwood, the City of Miami had adequately alleged an injury in fact.

As for Article III causation, again, we find that at this stage in the proceeding the City's alleged chain of causation is perfectly plausible: taking the City's allegations as true, the Bank's extensive pattern of discriminatory lending led to substantially more defaults on its predatory loans, leading to a higher rate of foreclosure on minority-owned property and thereby reducing the City's tax base. Moreover, the complaint supports its allegations with regression analyses that link the Bank's treatment of minority borrowers to predatory loans, predatory loans to foreclosure, and foreclosure to reduced tax revenue. All told, the City has "allege[d] facts essential to show jurisdiction." FW/PBS, 493 U.S. at 231 (quoting McNutt v. Gen. Motors Acceptance Corp., 298 U.S. 178, 189 (1936)).

2. "Statutory Standing"

The district court dismissed the City's claim because it lacked what the court characterized as "statutory standing."[6] It found that the City fell

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[6]As noted in the companion case, the Supreme Court has discarded the doctrinal label of "statutory standing" (sometimes also called "prudential standing"). See Lexmark Intl. Inc. v. Static Control Components, Inc., 134 S. Ct. 1377, 1387 & n.4 (2014). The Court clarified that the proper inquiry is whether the plaintiff "has a cause of action under the statute," id. at 1387, which is "a straightforward question of statutory interpretation," id. at 1388. The inquiry isn't a matter of standing, because "the absence of a valid cause of action does not implicate subject-matter jurisdiction, i.e., the court's statutory or constitutional power to adjudicate the case." Id. at

outside the FHA's "zone of interests," and that its harm was not proximately caused by the Bank's actions. Ultimately, for the reasons fully explained in Bank of America Corp., No. 14-14543, we disagree with the district court's legal conclusions.

a. Zone of Interests

This case, too, requires us to define the breadth of the term "aggrieved person" as it is used in the FHA. See 42 U.S.C. § 3613(a)(1)(A). As explained in detail in the companion case, we are bound by the Supreme Court's interpretation of the FHA in Trafficante v. Metropolitan Life Insurance, 409 U.S. 205 (1972), Gladstone, 441 U.S. 91, and Havens Realty Corp. v. Coleman, 455 U.S. 363 (1982): statutory standing "under [the FHA] . is 'as broad as is permitted by Article III of the Constitution.'" Gladstone, 441 U.S. at 109 (quoting Trafficante, 409 U.S. at 209) (alteration adopted); accord Havens, 455 U.S. at 372. Although the Supreme Court has suggested that it may be prepared to reconsider that holding, see Thompson v. North American Stainless, LP., 562 U.S. 170, 175-78 (2011), we must "follow the case which directly controls, leaving to the Supreme Court[] the prerogative of overruling its own decisions." Evans v. Sec'y, Fla. Dep't of Corr., 699 F.3d 1249, 1263 (11th Cir. 2012) (quotation omitted and alteration adopted); accord Tenet v. Doe, 544 U.S. 1, 10-11 (2005). Moreover, our circuit precedent in Nasser, 671 F.2d 432, is not to the contrary; that case stands for the unremarkable proposition that a plaintiff has no cause of action under the FHA if he makes no allegation of discrimination (or disparate

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1387 n.4 (quoting Verizon Md. Inc. v. Public Serv. Comm'n of Md., 535 U.S. 635, 642-643 (2002)).

impact) on the basis of race (or one of the FHA's other protected characteristics: color, religion, sex, handicap, familial status, and national origin). In this case, however, the complaint explicitly alleged race-based discrimination in the Bank's predatory lending practices.

Thus, we agree with the City that the term "aggrieved person" in the FHA sweeps as broadly as allowed under Article III. To the extent a zone of interests analysis applies to the FHA, it encompasses the City's allegations in this case.

b. Proximate Cause

As we explained at some length in the companion case, we agree with the district court that a plaintiff bringing an action for damages under the Fair Housing Act must plead proximate cause between his injury and the defendant's unlawful conduct. The Supreme Court has instructed that such a claim is "in effect, a tort action," governed by general tort rules, Meyer v. Holley, 537 U.S. 280, 285 (2003), and proximate cause is a classic element of a tort claim, see Dan B. Dobbs, Paul T. Hayden & Ellen M. Bublick, The Law of Torts § 198 (2d ed. 2011).

And we look to the law of torts to guide our proximate cause analysis, using foreseeability as our touchstone. Under this standard, we conclude again that the City has made an adequate showing. Proximate cause "is not the same thing as sole cause." Cox v. Adm'r U.S. Steel & Carnegie, 17 F.3d 1386, 1399 (11th Cir.), opinion modified on reh'g, 30 F.3d 1347 (11th Cir. 1994), and the fact that there are multiple plausible, foreseeable links in the alleged causal chain is not fatal to the City's claim.

3. Statute of Limitations and Remand

The district court dismissed the City's FHA claims with prejudice (and denied its motion for leave to amend) because it concluded that the City fell outside the statute's zone of interests and had not adequately pled proximate cause, and that these deficiencies were incurable. Resolving a plaintiff's motion to amend is "committed to the sound discretion of the district court," but that discretion "is strictly circumscribed" by Rule 15(a)(2) of the Federal Rules of Civil Procedure, which instructs that leave to amend should be "freely give[n] when justice so requires." Gramegna v. Johnson, 846 F.2d 675, 678 (11th Cir. 1988). Because the district court wrongly concluded that the City was outside the FHA's zone of interests and had not adequately pled proximate cause, its determination that any amended complaint would be futile was legal error and therefore an abuse of discretion. On remand, the City should be granted leave to amend its complaint.

In its original complaint, the City failed to allege that any of the offending loans closed within the limitations period (between December 13, 2011, and December 13, 2013). On appeal, the City does not contend that its original complaint was adequate; rather, it argues that it could readily cure the statute of limitations flaws if given the opportunity. The City points to its proposed amended complaint for support, in which it identified five specific properties corresponding to predatory loans issued after December 13, 2011. Amended Complaint at 49-50. On remand, the district court will have the opportunity to evaluate whether the City's new pleadings satisfy the statute of limitations, in a

manner consistent with our explanation of the continuing violation doctrine in the companion case.

B. Unjust Enrichment Claim

As for the City's state law unjust enrichment claim, we agree with the district court and affirm its ruling for the reasons detailed in the companion case. We have not found -- and the City has not provided -- a single Florida case supporting an unjust enrichment claim in these circumstances, and the City's claims do not fit within an unjust enrichment framework. Missing tax revenue is in no way a benefit that the City has conferred on the Bank. Municipal expenditures, meanwhile, do not appear to be among the types of benefits that can be recovered in an unjust enrichment action under Florida law See Penelas v. Arms Tech., Inc., No. 99-1941 CA-06, 1999 WL 1204353, at *2 (Fla. Cir. Ct. Dec. 13, 1999) ("[T]he County's claim for damages, based on the costs to provide 911, police, fire and emergency services effectively seeks reimbursement for expenditures made in its performance of governmental functions. Costs of such services are not, without express legislative authorization, recoverable by governmental entities."), affd, 778 So. 2d 1042 (Fla. Dist. Ct. App. 2001). They are also not a benefit directly conferred on the Bank, as is required for an unjust enrichment claim under Florida law. See, e.g., Extraordinary Title Servs. v. Fla. Power & Light Co., 1 So. 3d 400, 404 (Fla. Dist. Ct. App. 2009) (affirming the dismissal of an unjust enrichment claim because the plaintiff "ha[d] not conferred a direct benefit" on the defendant). Finally, the City has provided no arguments and cited no Florida caselaw explaining why the Bank would not be entitled to such services like any other

property owner. Cf. State Farm Fire & Cas. Co. v. Silver Star Health & Rehab, 739 F.3d 579, 584 (11th Cir. 2013) ("If an entity accepts and retains benefits that it is not legally entitled to receive in the first place, Florida law provides for a claim of unjust enrichment.").

The judgment of the district court is AFFIRMED in part, REVERSED in part, and REMANDED for further proceedings consistent with this opinion.

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 14-14543

D.C. Docket No. 1:13-cv-24506-WPD

CITY OF MIAMI,
a Florida Municipal Corporation,
Plaintiff Appellant,

versus

BANK OF AMERICA CORPORATION,
BANK OF AMERICA, N.A., et al.,
Defendants Appellees.

Appeals from the United States District Court
for the Southern District of Florida

(September 1, 2015)

Before MARCUS and WILSON, Circuit Judges, and SCHLESINGER,* District Judge.

MARCUS, Circuit Judge:

The City of Miami has brought an ambitious fair housing lawsuit against Bank of America,[1] alleging

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*Honorable Harvey E. Schlesinger, United States District Judge for the Middle District of Florida, sitting by designation.

[1]The City also filed substantially similar complaints against Citigroup and Wells Fargo for the same behavior. The three cases were heard by the same judge in the Southern District of

that it engaged in a decade-long pattern of discriminatory lending in the residential housing market that caused the City economic harm. The City claims that the bank targeted black and Latino customers in Miami for predatory loans that carried more risk, steeper fees, and higher costs than those offered to identically situated white customers, and created internal incentive structures that encouraged employees to provide these types of loans. The predatory loans, as identified by the City, include: high-cost loans (i.e., those with an interest rate at least three percentage points above a federally established benchmark), subprime loans, interest-only loans, balloon payment loans, loans with prepayment penalties, negative amortization loans, no documentation loans, and adjustable rate mortgages with teaser rates (i.e., a lifetime maximum rate greater than the initial rate plus 6%). Complaint for Violations of the Federal Fair Housing Act at 34, City of Miami v. Bank of America Corp., No. 13-24506-CIV (S.D. Fla. July 9, 2014) ("Complaint"). The City alleged that by steering minorities toward these predatory loans, Bank of America caused minority-owned properties throughout Miami to fall into unnecessary or premature foreclosure, depriving the City of tax revenue and forcing it to spend more on municipal services (such as police, firefighters, trash and debris

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Florida, and resolved in the same way: the reasoning laid out in the district court's order in this case was adopted and incorporated in the orders dismissing the other two cases. They were each appealed separately. We have resolved the companion cases in separate opinions. See City of Miami v. Citigroup Inc., No. 14-14706; City of Miami v. Wells Fargo & Co., No. 14-14544. This opinion contains the most detailed account of our reasoning.

removal, etc.) to combat the resulting blight. The City asserts one claim arising under the Fair Housing Act (FHA), 42 U.S.C. § 3601 et seq., as well as an attendant unjust enrichment claim under Florida law.

The district court dismissed the City's FHA claim with prejudice on three grounds: the City lacked statutory standing under the FHA because it fell outside the statute's "zone of interests"; the City had not adequately pled that Bank of America's conduct proximately caused the harm sustained by the City; and, finally, the City had run afoul of the statute of limitations and could not employ the continuing violation doctrine. We disagree with each of these conclusions.

As a preliminary matter, we find that the City has constitutional standing to pursue its FHA claims. We also conclude that under controlling Supreme Court precedent, the "zone of interests" for the Fair Housing Act extends as broadly as permitted under Article III of the Constitution, and therefore encompasses the City's claim. While we agree with the district court that the FHA contains a proximate cause requirement, we find that this analysis is based on principles drawn from the law of tort, and that the City has adequately alleged proximate cause. Finally, we conclude that the "continuing violation doctrine" can apply to the City's claims, if they are adequately pled.

Because the district court imposed too stringent a zone of interests test and wrongly applied the proximate cause analysis, we conclude that it erred in dismissing the City's federal claims with prejudice and in denying the City's motion for leave to amend

on the grounds of futility. As for the state law claim, we affirm the dismissal because the benefits the City allegedly conferred on the defendants were not sufficiently direct to plead an unjust enrichment claim under Florida law.

I.

On December 13, 2013, the City of Miami brought this complex civil rights action in the United States District Court for the Southern District of Florida against Bank of America Corporation, Bank of America N.A., Countrywide Financial Corporation, Countrywide Home Loans, and Countrywide Bank, FSB (collectively "Bank of America" or "the Bank") containing two claims. First, it alleged that the defendants violated sections 3604(b)[2] and 3605(a)[3] of the Fair Housing Act, Complaint at 53, by engaging in discriminatory mortgage lending practices that resulted in a disproportionate and excessive number of defaults by minority homebuyers and caused financial harm to the City It also alleged that the Bank unjustly enriched itself by taking advantage of

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[2]42 U.S.C. § 3604(b) makes it unlawful "[t]o discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin."

[3]"It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, handicap, familial status, or national origin." 42 U.S.C. § 3605(a). A "residential real estate-related transaction" includes "the making or purchasing of loans for improving, constructing, repairing, or maintaining a dwelling; or secured by residential real estate." Id. § 3605(b)(1).

"benefits conferred by the City" while, at the same time, engaging in unlawful lending practices, which "denied the City revenues it had properly expected through property and other tax payments and . cost[] the City additional monies for services it would not have had to provide . absent [the Bank's] unlawful activities."

The complaint accused Bank of America of engaging in both "redlining" and "reverse redlining." Redlining is the practice of refusing to extend mortgage credit to minority borrowers on equal terms as to non-minority borrowers. Reverse redlining is the practice of extending mortgage credit on exploitative terms to minority borrowers. Complaint at 3. The City alleged that the Bank engaged in a vicious cycle: first it "refused to extend credit to minority borrowers when compared to white borrowers," then "when the bank did extend credit, it did so on predatory terms." Id. at 4. When minority borrowers then attempted to refinance their predatory loans, they "discover[ed] that [the Bank] refused to extend credit at all, or on terms equal to those offered to white borrowers." Id. at 5.

The City claimed that this pattern of providing more onerous loans -- i.e., those containing more risk, carrying steeper fees, and having higher costs -- to black and Latino borrowers (as compared to white borrowers of identical creditworthiness) manifested itself in the Bank's retail lending pricing, its wholesale lending broker fees, and its wholesale lending product placement. Id. at 18-25. It also averred that the Bank's internal loan officer compensation system encouraged its employees to give out these types of loans even when they were not justified by the borrower's creditworthiness. See

id. at 20, 24. The City claimed that Bank of America's practice of redlining and reverse redlining constituted a "continuing and unbroken pattern" that persists to this day. Id. at 4.

The City said that the Bank's conduct violated the Fair Housing Act in two ways. First, the City alleged that the Bank intentionally discriminated against minority borrowers by targeting them for loans with burdensome terms. Id. at 30-33. Second, the City claimed that the Bank's conduct had a disparate impact on minority borrowers, resulting in a disproportionate number of foreclosures on minority-owned properties, and a disproportionate number of exploitative loans in minority neighborhoods. Id. at 26-30.

Among other things, the City employed statistical analyses to draw the alleged link between the race of the borrowers, the terms of the loans, and the subsequent foreclosure rate of the underlying properties. Drawing on data reported by the Bank about loans originating in Miami from 2004-2012, the City claimed that a Bank of America loan in a predominantly (greater than 90%) minority neighborhood of Miami was 5.857 times more likely to result in foreclosure than such a loan in a majority-white neighborhood. Id. at 43. According to the City's regression analysis (which purported to control for objective risk characteristics such as credit history, loan-to-value ratio, and loan-to-income ratio), id. at 37, a black Bank of America borrower in Miami was 1.581 times more likely to receive a loan with "predatory" features[4] than a white borrower,

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[4]As we've noted, the City identified as "predatory" those containing features such as high-cost loans (i.e., those with an

and a Latino borrower was 2.087 times more likely to receive such a loan. Moreover, black Bank of America borrowers with FICO scores over 660 (indicating good credit) in Miami were 1.533 times more likely to receive a predatory loan than white borrowers, while a Latino borrower was 2.137 times more likely to receive such a loan. Id. at 6.

The City's data also suggested that from 2004-2012, 21.9% of loans made by Bank of America to black and Latino customers in Miami were high-cost, compared to just 8.9% of loans made to white customers. Id. at 34. Data cited in the complaint showed significantly elevated rates of foreclosure for loans in minority neighborhoods. While 53.3% of Bank of America's Miami loan originations were in "census tracts" that are at least 75% black or Latino, 95.7% of loan originations that had entered foreclosure by June 2013 were from such census tracks. Id. at 39. And 32.8% of Bank of America's loans in predominantly black or Latino neighborhoods resulted in foreclosure, compared to only 7.7% of its loans in non-minority (at least 50% white) neighborhoods. Id. at 40. Likewise, a Bank of America borrower in a predominantly black or Latino census tract was 1.585 times more likely to receive a predatory loan as a borrower with similar characteristics in a non-minority neighborhood. Id. at 38.

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interest rate that was at least three percentage points above a federally established benchmark), subprime loans, interest-only loans, balloon loan payments, loans with prepayment penalties, negative amortization loans, no documentation loans, and adjustable rate mortgages with teaser rates (i.e., a lifetime maximum rate greater than the initial rate plus 6%). Complaint at 34.

The complaint also alleged that the bank's loans to minorities resulted in especially quick foreclosures.[5] The average time to foreclosure for Bank of America's black and Latino borrowers was 3.144 years and 3.090 years, respectively, while for white borrowers it was 3.448 years. Id. at 42. The allegations also gathered data from various non-Miami-based studies (some nationwide, some based on case studies in other cities) to demonstrate the elevated prevalence of foreclosure, predatory loan practices, and higher interest rates among black and Latino borrowers, and the foreseeability of foreclosures arising from predatory lending practices and their attendant harm. See id. at 26-30.

The City's charges were further amplified by the statements of several confidential witnesses who claimed that the Bank deliberately targeted black and Latino borrowers for predatory loans. Thus, for example, one mortgage loan officer with Bank of America who worked on loans in the Miami area claimed that the bank targeted less savvy minorities for negative amortization loans. Id. at 31. Another noted that Bank of America paid higher commissions to loan officers for Fair Housing Act loans as opposed to the allegedly more advantageous Community

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[5]The complaint quoted a joint report from the Department of Housing and Urban Development and the Department of the Treasury noting that time to foreclosure is an important indicator of predatory practices: "[t]he speed with which the subprime loans in these communities have gone to foreclosure suggests that some lenders may be making mortgage loans to borrowers who did not have the ability to repay those loans at the time of origination." U.S. Dep't of Hous. & Urban Dev. & U.S. Dep't of Treasury, Curbing Predatory Home Mortgage Lending 25 (2000), available at http://www.huduser.org/Publications/pdf/treasrpt.pdf. Complaint at 43.

Reinvestment Act (CRA) loans, incentivizing officers to steer borrowers away from the CRA loans. Id. at 32. Still another noted that back-end premiums (a premium earned by the loan officer equal to the difference between the borrower's loan rate and the rate the bank pays for it) on loans were not disclosed and "often eluded less educated, minority borrowers." Id. One of the witnesses explained that from 2011-2013, Bank of America did not offer regular refinancing to persons with mortgages at over 80% of the value of the house (including many negative amortization loans), which disproportionately affected minorities in danger of losing their homes. Id. at 33.

Notably, the City sought damages based on reduced property tax revenues. Id. at 45. It claimed that the Bank's lending policies caused minority-owned property to fall into unnecessary or premature foreclosure. Id. The foreclosed-upon properties lost substantial value and, in turn, decreased the value of the surrounding properties, thereby depriving the City of property tax revenue. The City alleged that "Hedonic regression" techniques could be used to quantify the losses the City suffered that were attributable to the Bank's conduct. Id. at 46-47 The City also sought damages based on the cost of the increased municipal services it provided to deal with the problems attending the foreclosed and often vacant properties -- including police, firefighters, building inspectors, debris collectors, and others. These increased services, the City claimed, would not have been necessary if the properties had not been foreclosed upon due to the Bank's discriminatory lending practices. Id. at 49-50. The City also sought a declaratory judgment that the Bank's conduct

violated the FHA, an injunction barring the Bank from engaging in similar conduct, and punitive damages, as well as attorneys' fees. Id. at 55-56.

On July 9, 2014, the district court granted defendants' motion to dismiss.[6] First, the court found that the City of Miami lacked statutory standing to sue under the FHA. The court determined that, based on this Court's earlier opinion in Nasser v. City of Homewood, 671 F.2d 432 (11th Cir. 1982), the City's claim fell outside the FHA's "zone of interests," and therefore the City lacked standing to sue under this statute. In particular, the trial court determined that the City had alleged "merely economic injuries" that were not "affected by a racial interest." Like the plaintiffs in Nasser, the court suggested, the City was seeking redress under the FHA for "an economic loss from a decrease in property values," and as with the plaintiffs in Nasser, this was insufficient. The City's goal went far beyond the purpose of the FHA, which is to "provide, within constitutional limitations, for fair housing throughout the United States." City of Miami v. Bank of America Corp., 2014 WL 3362348, at *4 (quoting 42 U.S.C. § 3601).

The court also concluded that the FHA contains a proximate cause requirement, but that the City had not adequately pled proximate cause. The City had not sufficiently traced any foreclosures to the defendants' conduct, as opposed to confounding background variables such as "a historic drop in home prices and a global recession," and "the decisions and actions of third parties, such as loan

[6] This order was adopted and incorporated in the two companion cases involving Citigroup and Wells Fargo.

services, government entities, competing sellers, and uninterested buyers." Id. at *5. The court also determined that the City had not shown that the Bank's mortgage practices caused the City any harm. It was unimpressed with the "statistics and studies" the City cited, noting that some were not based on data from Miami, some were not limited to the defendants' practices, and others "d[id] not control for relevant credit factors that undoubtedly affect lending practices." Id. Moreover, some of the harm to the City stemmed directly from "the actions of intervening actors such as squatters, vandals or criminals that damaged foreclosed properties." Id.

The district court also concluded that the City's federal claim ran afoul of the statute of limitations. It noted that for the FHA, a plaintiff must bring his claim "not later than 2 years after the occurrence" of the discriminatory housing practice, and that for discriminatory loans the statute of limitations begins to run from the date of the loan closing. But the City had not alleged that any loans were made later than 2008, a full five years before its complaint was filed. The court was not persuaded by the City's invocation of the continuing violation doctrine -- which can allow plaintiffs, under some circumstances, to sue on an otherwise time-barred claim -- since the City had not alleged sufficient facts to support its allegation that the specific practices continued into the statutory period. The district court dismissed the City's FHA claim with prejudice, reasoning that even if the statute of limitations deficiencies could be cured by an amended pleading, the City's lack of statutory standing could not be.

Finally, the district court rejected the City's unjust enrichment claim on several grounds. As a

preliminary matter, the City had failed to draw the necessary causal connection between the Bank's alleged discriminatory practices and its receipt of undeserved municipal services. Moreover, the court found that the City had failed to allege basic elements of an unjust enrichment claim under Florida law. It determined that any benefit the Bank received from municipal services was not direct but "derivative" and, therefore, insufficient to support an unjust enrichment claim. It also found that the City had failed to allege that the Bank was not otherwise entitled to those services as a Miami property owner. Finally, it rejected the City's argument that Miami was forced to pay for the Bank's externalities (the costs of the harm caused by its mortgage lending), holding that paying for externalities cannot sustain an unjust enrichment claim. The district court dismissed the unjust enrichment claim without prejudice, leaving the City free to amend its complaint.

The City chose not to proceed on its unjust enrichment claim alone "because the two claims are so intimately entwined and based on largely the same underlying misconduct." Instead, it moved in the district court for reconsideration and for leave to file an amended complaint, arguing that it had standing under the FHA and that the amended complaint would cure any statute of limitations deficiency The proposed amended complaint alleged that the Bank's discriminatory lending practices "frustrate[] the City's longstanding and active interest in promoting fair housing and securing the benefits of an integrated community," thereby "directly interfer[ing]" with one of the City's missions. First Amended Complaint for Violations of

the Federal Fair Housing Act at 31, City of Miami v. Bank of America Corp., No. 13-24506-CIV (S.D. Fla. Sept. 9, 2014) ("Amended Complaint"). It also made more detailed allegations about properties that had been foreclosed upon after being subject to discriminatory loans. Specifically, the proposed amended complaint identified five foreclosed properties that corresponded to predatory loans that originated between 2008 and 2012, and three that originated between 2004 and 2008. It also identified seven properties that corresponded to predatory loans that the Bank had issued after December 13, 2011 (within two years of filing suit) that had not yet been foreclosed upon but were likely to "eventually enter the foreclosure process," based on expert analysis. Id. at 36-37. The complaint continued to invoke the continuing violation doctrine and claimed that the statute of limitations had not run.

The district court denied the City's motion for reconsideration and for leave to amend. As for statutory standing, the court explained that "[a]rguing that this Court's reasoning was flawed is not enough for a motion for reconsideration." City of Miami v. Bank of America Corp., 2014 WL 4441368, at *2. And the court was unimpressed by the City's new argument that it "has a generalized non-economic interest in racial diversity," ruling that these were "claims [the City] never made and amendments it did not previously raise or offer despite ample opportunity," and were therefore "improperly raised as grounds for reconsideration." Id. Finally, the court noted that these "generalized allegations [do not] appear to be connected in any meaningful way to the purported loss of tax revenue

and increase in municipal expenses allegedly caused by Defendants' lending practices." Id. at *2 n.1.

The City timely appealed the court's final order of dismissal.

II.

A. Standard of Review

We review the district court's grant of a motion to dismiss with prejudice de novo, "accepting the [factual] allegations in the complaint as true and construing them in the light most favorable to the plaintiff." Mills v. Foremost Ins. Co., 511 F.3d 1300, 1303 (11th Cir. 2008) (quotation omitted). We generally review the district court's decision to deny leave to amend for an abuse of discretion, but we will review de novo an order denying leave to amend on the grounds of futility, because it is a conclusion of law that an amended complaint would necessarily fail. Hollywood Mobile Estates Ltd. v. Seminole Tribe of Fla., 641 F.3d 1259, 1264 (11th Cir. 2011). Finally, we review de novo whether plaintiffs have Article III standing. Ga. Latino Alliance for Human Rights v. Governor of Ga., 691 F.3d 1250, 1257 (11th Cir. 2012).

B. Fair Housing Act Claim

1. Article III Standing

We come then to the first essential question in the case: whether the City of Miami has constitutional standing to bring its Fair Housing Act claim. See Bochese v. Town of Ponce Inlet, 405 F.3d 964, 974 (11th Cir. 2005) ("[Article III] [s]tanding is a threshold jurisdictional question which must be addressed prior to the merits of a party's claims." (quoting Dillard v. Baldwin Cnty. Comm'rs, 225 F.3d

1271, 1275 (11th Cir. 2000)). Although the district court addressed only the issue of so-called "statutory standing," the Bank contests both Article III standing and statutory standing, and we address each in turn.

"[S]tanding is an essential and unchanging part of the case-or-controversy requirement of Article III." Lujan v. Defs. of Wildlife, 504 U.S. 555, 560 (1992). It is by now axiomatic that to establish constitutional standing at the pleading stage, the plaintiff must plausibly allege: (1) an injury in fact that is concrete, particularized, and actual or imminent; (2) "a causal connection between the injury and the conduct complained of," such that the injury is "fairly traceable to the challenged action of the defendant"; and (3) that a favorable judicial decision will "likely" redress the injury. See Bochese, 405 F.3d at 980 (quotation omitted). The "line of causation" between the alleged conduct and the injury must not be "too attenuated." Allen v. Wright, 468 U.S. 737, 752 (1984). The party invoking federal jurisdiction bears the burden of establishing these elements. See FW/PBS, Inc. v. Dallas, 493 U.S. 215, 231 (1990). At the pleading stage, "general factual allegations of injury resulting from the defendant's conduct may suffice" to demonstrate standing. Defs. of Wildlife, 504 U.S. at 561.

The district court did not address whether the City had Article III standing because it granted the Bank's motion to dismiss on other grounds. On appeal, the Bank argues that the City lacked Article III standing because it had not adequately alleged the causal connection -- that is, the "traceability" -- between its injury and the Bank's conduct. We are unpersuaded.

To recap, the City claims that the Bank's discriminatory lending practices caused minority-owned properties to fall into foreclosure when they otherwise would not have, or earlier than they otherwise would have. This, in turn, decreased the value of the foreclosed properties themselves and the neighboring properties, thereby depriving the City of property tax revenue, and created blight, thereby forcing the City to spend additional money on municipal services. Complaint at 45-50. We have little difficulty in finding, based on controlling Supreme Court caselaw, that the City has said enough to allege an injury in fact for constitutional standing purposes. Our analysis is guided by Gladstone, Realtors v. Village of Bellwood, 441 U.S. 91 (1979). In that case, the Village of Bellwood sued a real estate firm under the FHA for discriminatory renting practices that caused racial segregation. Id. at 94-95. The Supreme Court held that the village had Article III standing to bring its claim partly on the basis of "[a] significant reduction in property values," because such a reduction "directly injures a municipality by diminishing its tax base, thus threatening its ability to bear the costs of local government and to provide services." Id. at 110-11. Like the Village of Bellwood, the City of Miami claims that an allegedly discriminatory policy has reduced local property values and diminished its tax base. Thus, like the Village of Bellwood, the City of Miami has adequately alleged an injury in fact.

As for Article III causation, the Bank claims that the City's harm is not fairly traceable to the Bank's conduct. Specifically, it suggests that a myriad of other factors cause foreclosure and blight -- including the state of the housing market and the actions of

third parties like other property owners, competing sellers, vandals, etc. -- thereby breaking the causal chain. While we acknowledge the real possibility of confounding variables, at this stage in the proceeding the City's alleged chain of causation is perfectly plausible: taking the City's allegations as true, the Bank's extensive pattern of discriminatory lending led to substantially more defaults on its predatory loans, leading to a higher rate of foreclosure on minority-owned property and thereby reducing the City's tax base. See Cnty. of Cook v. Wells Fargo & Co., No. 14 C 9548, 2015 WL 4397842, at *3-4 (N.D. Ill. July 17, 2015) (finding the same causal allegation sufficient for Article III traceability in a materially identical FHA case and citing eight other district court cases finding the same). Moreover, the complaint supports its allegations with regression analyses that link the Bank's treatment of minority borrowers to predatory loans, predatory loans to foreclosure, and foreclosure to reduced tax revenue. Complaint at 6, 37-38, 44, 46. All told, the City has "allege[d] facts essential to show jurisdiction." FW/PBS, 493 U.S. at 231 (quoting McNutt v. Gen. Motors Acceptance Corp., 298 U.S. 178, 189 (1936)).

Of course, the City has limited its claim only to those damages arising from foreclosures caused by the Bank's lending practices. At a subsequent stage in the litigation it may well be difficult to prove which foreclosures resulted from discriminatory lending, how much tax revenue was actually lost as a result of the Bank's behavior, etc. But at this early

stage, the claim is plausible and sufficient. The City has said enough to establish Article III standing.[7]

2. "Statutory Standing"

The district court dismissed the City's claim, however, not on the basis of Article III standing, but because it lacked what the court characterized as "statutory standing." It found that the City fell outside the FHA's "zone of interests," and that its harm was not proximately caused by the Bank's actions. Ultimately, we disagree with the district court's legal conclusions. As for the zone of interests, we conclude that we are bound by Supreme Court precedent stating that so-called statutory standing under the FHA extends as broadly as Article III will permit, and find that this includes the City. As for proximate cause, we agree that it must be pled for a damages claim under the FHA, but find that the City has adequately done so here.

Notably, the Supreme Court recently clarified in Lexmark International, Inc. v. Static Control Components, Inc., 134 S. Ct. 1377 (2014), that the longstanding doctrinal label of "statutory standing" (sometimes also called "prudential standing") is misleading. The proper inquiry is whether the plaintiff "has a cause of action under the statute." Id. at 1387. But that inquiry isn't a matter of standing, because "the absence of a valid . cause of action does not implicate subject-matter jurisdiction, i.e., the court's statutory or constitutional power to adjudicate the case." Id. at 1387 n.4 (quoting

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[7]The third Lujan factor, redressability, is not at issue in this appeal. The City has "allege[d] a monetary injury and an award of compensatory damages would redress that injury." Resnick v. AvMed, Inc., 693 F.3d 1317, 1324 (11th Cir. 2012).

Verizon Md. Inc. v. Public Serv. Comm'n of Md., 535 U.S. 635, 642-643 (2002)). Instead, it is "a straightforward question of statutory interpretation." Id. at 1388.

This issue comes before the Court on a motion to dismiss for failure to state a claim, and the City's pleadings are evaluated for plausibility using the standard set forth in Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007), and Ashcroft v. Iqbal, 556 U.S. 662 (2009). "The complaint must contain enough facts to make a claim for relief plausible on its face; a party must plead 'factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.'" Resnick v. AvMed, Inc., 693 F.3d 1317, 1324-25 (11th Cir. 2012) (quoting Iqbal, 556 U.S. at 678). Of course, in evaluating the plausibility of the claim we must take all of the plaintiff's factual allegations as true. See Iqbal, 556 U.S. at 678.

a. Zone of Interests

In general, a statutory cause of action "extends only to those plaintiffs whose interests 'fall within the zone of interests protected by the law invoked.'" Lexmark, 134 S. Ct. at 1388 (quoting Allen v. Wright, 468 U.S. 737, 751 (1984)). The Supreme Court has instructed us that this test "applies to all statutorily created causes of action," but its application is not uniform: "certain statutes . protect a more-than-usually 'expansive' range of interests." Id. (quoting Bennett v. Spear, 520 U.S. 154, 164 (1997)) (alteration adopted).

The FHA provides that

> [a]n aggrieved person may commence a civil action in an appropriate United States district

> court or State court not later than 2 years after the occurrence or the termination of an alleged discriminatory housing practice to obtain appropriate relief with respect to such discriminatory housing practice or breach.

42 U.S.C. § 3613(a)(1)(A). It defines an "aggrieved person" as anyone who "claims to have been injured by a discriminatory housing practice," or "believes that such person will be injured by a discriminatory housing practice that is about to occur." Id. at § 3602(i).

The Bank claims that the City is not an "aggrieved person," and, therefore, falls outside the statute's zone of interests and cannot state a cause of action under the FHA. The City argues, however, that "FHA statutory standing is as broad as the Constitution permits under Article III," and therefore it is within the statute's zone of interests. Older Supreme Court cases appear to support the City's view, while certain more recent cases -- as well as an older decision of this Court -- have cast some doubt on the viability of those holdings. The answer requires carefully parsing both Supreme Court and Eleventh Circuit precedent, and a review of the relevant cases is instructive.

i. Early Supreme Court cases

The first major FHA case explicated by the Supreme Court is Trafficante v. Metropolitan Life Insurance, 409 U.S. 205 (1972). Two tenants of an apartment complex -- one black, one white -- alleged that the landlord discriminated against minorities on the basis of race when renting units, in violation of the FHA. Id. at 206-07. The Court held that standing under the Act was defined "as broadly as is

permitted by Article III of the Constitution . . . insofar as tenants of the same housing unit that is charged with discrimination are concerned." Id. at 209 (quotation omitted). "The language of the Act is broad and inclusive," the Court wrote, and "the alleged injury to existing tenants by exclusion of minority persons from the apartment complex is the loss of important benefits from interracial associations." Id. at 209-10.

Seven years later, in Gladstone, the Village of Bellwood brought suit under the FHA against two real estate firms for "steering" black and white homeowners into targeted, race-specific neighborhoods, thereby "manipulat[ing] the housing market," "affecting the village's racial composition," and causing "[a] significant reduction in property values." 441 U.S. at 109-10. The Court concluded that the village had stated a cause of action under the FHA and reaffirmed, based on the legislative history and purpose of the statute, that statutory standing under the FHA "is as broad as is permitted by Article III of the Constitution." Id. at 109 (quotation omitted and alteration adopted).

Next came Havens Realty Corp. v. Coleman, 455 U.S. 363 (1982), in which -- along with other plaintiffs -- a nonprofit corporation whose purpose was "to make equal opportunity in housing a reality in the Richmond Metropolitan Area" brought an FHA claim against a realty firm for racial steering (i.e., fostering racial segregation by guiding prospective buyers towards or away from certain apartments based on the buyer's race). In the clearest and most unambiguous terms, the Supreme Court reiterated the holding of Gladstone: "Congress intended standing under [the FHA] to extend to the full limits

of Art. III and . the courts accordingly lack the authority to create prudential barriers to standing in suits brought under [the FHA]." Id. at 372 (quotation omitted). As the Court explained, "the sole requirement for standing to sue under [the FHA] is the Art. III minima of injury in fact: that the plaintiff allege that as a result of the defendant's actions he has suffered 'a distinct and palpable injury.'" Id. (quoting Warth v. Seldin, 422 U.S. 490, 501 (1975)). The organization's allegation that the racial steering "perceptibly impaired [its] ability to provide counseling and referral services for low- and moderate-income homeseekers" was sufficient to constitute injury in fact for purposes of Article III (and statutory) standing. Id. at 379.

ii. Nasser

Less than a month after Havens, the Eleventh Circuit issued an opinion in Nasser, 671 F.2d 432, on which the district court and the Bank principally rely. In Nasser, property owners challenged a zoning ordinance that rezoned their property from multi-family residential to single-family residential, alleging, inter alia, that the ordinance violated the FHA. Id. at 434. In 1976, the plaintiffs entered into an agreement with a developer for the construction of a multi-family housing complex on their property. The developer had looked into the possibility of making some units of this complex available for low- and moderate-income families via rent subsidies, and had inquired with the Department of Housing and Urban Development. But the development never materialized. A detailed affidavit from a member of the county planning commission stated that the plaintiffs had never suggested that their purpose "was to build a multi-family project for the use and

benefit of low income or minority groups." Id. at 435. Instead, the affidavit claimed that the plaintiffs had represented their project as "an exclusive-high rent apartment complex." Id. The Court found that there was no "evidence that the 1976 project was in any way affected by or related to racial or other minority interests." Id.

Three years later, the land was re-zoned. Id. at 434. The plaintiffs claimed that the re-zoning had reduced the value of their property by more than 50% (from $285,000 to $135,000). See id. at 435. A panel of this Court concluded that the plaintiffs lacked statutory standing under the FHA despite this purported economic injury. In making this determination, the Court considered Trafficante and Gladstone, and concluded: "There is no indication that the [Supreme] Court intended to extend standing, beyond the facts before it, to plaintiffs who show no more than an economic interest which is not somehow affected by a racial interest." Id. at 437. The Nasser Court found that the property owners lacked an economic interest affected by a racial interest, and therefore lacked standing to sue under the FHA. Id. at 438.

iii. Newer Supreme Court cases on statutory standing

Two recent Supreme Court cases have cast some doubt on the broad interpretation of FHA statutory standing in Trafficante, Gladstone, and Havens. In Thompson v. North American Stainless, LP., 562 U.S. 170 (2011), the Court considered whether an employee had a cause of action under Title VII, which uses nearly identical statutory language to the FHA. See 42 U.S.C. § 2000e-5(f)(1) ("[A] civil action may be

brought . by the person claiming to be aggrieved."). The Court rejected the argument that this language expanded statutory standing to the limits of Article III. Id. at 177 Instead, it drew an analogy to the Administrative Procedure Act (which contains similar language) and held that plaintiffs must "fall[] within the 'zone of interests' sought to be protected by the statutory provision whose violation forms the legal basis for his complaint." Id. at 177-78 (quoting Lujan v. Nat'l Wildlife Fed'n, 497 U.S. 871, 883 (1990)).

The Court acknowledged that this analysis was in some tension with Trafficante and Gladstone. But in glossing Trafficante, the Thompson Court focused on language in the opinion that arguably limited the holding to its facts: the Trafficante Court stated that standing under the FHA was coextensive with Article III only "insofar as tenants of the same housing unit that is charged with discrimination are concerned." Id. at 176 (quoting Trafficante, 409 U.S. at 209). The Thompson Court acknowledged that later cases (such as Gladstone) reiterated that standing under the FHA "reaches as far as Article III permits" without any limiting language, but it stated that "the holdings of those cases are compatible with the 'zone of interests' limitation" that the Court went on to read into Title VII. Id. at 177.

Finally, the Supreme Court's recent opinion in Lexmark (interpreting the Lanham Act) discarded the labels "prudential standing" and "statutory standing," and clarified that the inquiry was really a question of statutory interpretation, and not standing at all. 134 S. Ct. at 1386-87 & n.4. One aspect of this interpretation, the Court explained,

was a zone of interests analysis, which "requires [the court] to determine, using traditional tools of statutory interpretation, whether a legislatively conferred cause of action encompasses a particular plaintiff's claim." Id. at 1387 The Court went on to say that this zone of interests test "applies to all statutorily created causes of action." Id. at 1388. Lexmark did not mention the FHA or any of the Court's FHA cases.

iv. Analysis

The scope and role of the zone of interests analysis in the FHA context is a difficult issue, and one that has sharply divided the courts that have considered it. Compare, e.g., Cnty. of Cook, 2015 WL 4397842, at *5-6 (holding that Thompson and Lexmark effectively overruled the Supreme Court's interpretation of FHA statutory standing as being coextensive with Article III standing), with, e.g., City of Los Angeles v. JPMorgan Chase & Co., No. 2:14-CV-04168-ODW, 2014 WL 6453808, at *6 (C.D. Cal. Nov. 14, 2014) (finding that the Supreme Court's original interpretation of FHA statutory standing remained good law after Thompson and Lexmark). Ultimately, we disagree with the district court, and hold that the phrase "aggrieved person" in the FHA extends as broadly as is constitutionally permissible under Article III.

Simply put, Trafficante, Gladstone, and Havens have never been overruled, and the law of those cases is clear as a bell: "[statutory] standing under [the FHA] extends 'as broadly as is permitted by Article III of the Constitution.'" Gladstone, 441 U.S. at 98 (quoting Trafficante, 409 U.S. at 209); accord Havens, 455 U.S. at 372. While Thompson has

gestured in the direction of rejecting that interpretation, a gesture is not enough. The rule governing these situations is clear: "if a precedent of the Supreme Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls, leaving to the Supreme Court[] the prerogative of overruling its own decisions." Evans v. Sec'y, Fla. Dep't of Corr., 699 F.3d 1249, 1263 (11th Cir. 2012) (quotation omitted and alterations adopted); accord Tenet v. Doe, 544 U.S. 1, 10-11 (2005). In other words, "the Supreme Court has insisted on reserving to itself the task of burying its own decisions." Evans, 699 F.3d at 1263 (quotation omitted).

Notably, Thompson itself was a Title VII case, not a Fair Housing Act case. Thompson surveyed Trafficante and Gladstone, but did not explicitly overrule them -- nor could it, given the different statutory context in which it arose. Instead, the Court held that any suggestion drawn from the FHA cases that Title VII's cause of action is similarly broad was "ill-considered" dictum. Thompson, 562 U.S. at 176. It's true that Title VII contains nearly identical statutory language to the FHA, and therefore the Thompson Court's interpretation of Title VII may signal that the Supreme Court is prepared to narrow its interpretation of the FHA in the future. (The dicta in Thompson indicating that its Title VII interpretation is "compatible" with the Court's previous FHA holdings suggests as much. See 562 U.S. at 176-77.) But that day has not yet arrived, and until it does, our role as an inferior court is to apply the law as it stands, not to read tea leaves. The still-undisturbed holding of the

Supreme Court's FHA cases is that the definition of an "aggrieved person" under the FHA extends as broadly as permitted under Article III.

This Court's binding precedent in Nasser is not to the contrary. Nasser stands for the unremarkable proposition that a plaintiff has no cause of action under the FHA if he makes no allegation of discrimination (or disparate impact) on the basis of race (or one of the FHA's other protected characteristics: color, religion, sex, handicap, familial status, and national origin). The allegation of discrimination provides the "racial interest" Nasser requires to bring an economic injury within the scope of the statute. 671 F.2d at 437. The Nasser plaintiffs' claim was unrelated to race (or any protected FHA characteristic) altogether; they simply objected to the rezoning of their property because it cost them money. As the Nasser Court put it, the plaintiffs' "interest in [the] value of the property in no way implicate[d] [the] values protected by the Act." Id.

Indeed, this is exactly how subsequent Eleventh Circuit caselaw has treated Nasser. In Baytree of Inverrary Realty Partners v. City of Lauderhill, 873 F.2d 1407 (11th Cir. 1989) -- the only case of this Court to revisit or reference Nasser's treatment of the FHA -- we held that a non-minority real estate developer, Baytree, stated a claim under the FHA when it challenged the city's decision to rezone its property, alleging that the decision was racially motivated and rendered the property worthless. Id. at 1408. We distinguished Nasser as a case "in which plaintiffs alleged only an economic injury unaffected by any racial interest," and found it inapposite because Baytree had properly alleged that

its injury "result[ed] from racial animus." Id. at 1409. The same is true of the City of Miami's claim. Like Baytree, the City claims to have suffered an economic injury resulting from a racially discriminatory housing policy; in neither case does Nasser prevent the plaintiff from stating a claim under the FHA.

In sum, we agree with the City that the term "aggrieved person" in the FHA sweeps as broadly as allowed under Article III; thus, to the extent a zone of interests analysis applies to the FHA, it encompasses the City's allegations in this case. The City's claim does not suffer from the same flaw as the Nasser plaintiffs', because the City has specifically alleged that its injury is the result of a Bank policy either expressly motivated by racial discrimination or resulting in a disparate impact on minorities.

b. Proximate Cause

The district court also concluded that the City's pleadings did not sufficiently allege that the Bank's lending practices were a proximate cause of the City's injury. It determined that the City had not "allege[d] facts that isolate Defendants' practices as the cause of any alleged lending disparity" compared to the background factors of a cratering economy and the actions of independent actors such as "loan services, government entities, competing sellers, and uninterested buyers." City of Miami v. Bank of America Corp., 2014 WL 3362348, at *5. It also found that the City's statistical analyses indicating that foreclosures caused economic harm were "insufficient to support a causation claim," because some of the studies were not limited to

Miami, some were not limited to the defendants' practices, and some did not control for relevant credit factors. Id. The plaintiffs disagree, arguing that they need not plead proximate causation at all, only the lesser "traceability" required by Article III. In the alternative, they say that their pleadings were sufficient under either standard. Although we agree with the Bank and the district court that proximate cause is a required element of a damages claim under the FHA, we find that the City has pled it adequately.

In Lexmark, the Supreme Court illuminated the doctrine of proximate cause as it relates to statutory causes of action. "[W]e generally presume that a statutory cause of action is limited to plaintiffs whose injuries are proximately caused by violations of the statute." 134 S. Ct. at 1390. This principle reflects "the reality that the judicial remedy cannot encompass every conceivable harm that can be traced to alleged wrongdoing," as well as the Court's assumption that Congress is familiar with the traditional common-law rule and "does not mean to displace it sub silentio." Id. (quotation omitted). The Court made clear that proximate causation is not a requirement of Article III, but rather an element of the cause of action under a statute, and it "must be adequately alleged at the pleading stage in order for the case to proceed." Id. at 1391 n.6. The Supreme Court has read a variety of federal statutory causes of action to contain a proximate cause requirement. See, e.g., Lexmark, 134 S. Ct. at 1390-93 (Lanham Act); Dura Pharmaceuticals, Inc. v. Broudo, 544 U.S. 336, 346 (2005) (securities fraud); Holmes v. Sec. Investor Prot. Corp., 503 U.S. 258, 265-68 (1992) (RICO); Associated Gen. Contractors of Cal., Inc. v.

Cal. State Council of Carpenters, 459 U.S. 519, 529-35 (1983) (Clayton Act).

Although proximate cause "is not easy to define," the basic inquiry is "whether the harm alleged has a sufficiently close connection to the conduct the statute prohibits." Lexmark, 134 S. Ct. at 1390. The requirement is "more restrictive than a requirement of factual cause alone," Paroline v. United States, 134 S. Ct. 1710, 1720 (2014), and we have said that it demands "something [more]" than Article III traceability, Focus on the Family v. Pinellas Suncoast Transit Auth., 344 F.3d 1263, 1273 (11th Cir. 2003); see also Lexmark, 134 S. Ct. at 1391 n.6. But the nature of the proximate cause requirement differs statute by statute: it is "controlled by the nature of the statutory cause of action," so the scope of liability depends on the statutory context. Lexmark, 134 S. Ct. at 1390.

No case of the Supreme Court or this Court has ever dealt directly with the existence or application of a proximate cause requirement in the FHA context. But certain statements by the Supreme Court suggest that proximate cause must exist for a damages action brought under the FHA. First, the Lexmark Court characterized proximate cause as a "general[] presum[ption]" in statutory interpretation. Id. at 1390. Moreover, the Supreme Court has observed that an FHA damages claim is "in effect, a tort action," governed by general tort rules, Meyer v. Holley, 537 U.S. 280, 285 (2003); Curtis v. Loether, 415 U.S. 189, 195 (1974) ("A damages action under the [FHA] sounds basically in tort -- the statute merely defines a new legal duty, and authorizes the courts to compensate a plaintiff for the injury caused by the defendant's wrongful breach."), and proximate

cause is a classic element of a tort claim, see Dan B. Dobbs, Paul T. Hayden & Ellen M. Bublick, The Law of Torts § 198 (2d ed. 2011). If the City's claim is functionally a tort action, then presumably the City must adequately plead proximate cause, just like any other plaintiff raising any tort claim. At least two of our sister circuits appear to have reached the same conclusion. See Pac. Shores Props., LLC v. City of Newport Beach, 730 F.3d 1142, 1167-68 & n.32 (9th Cir. 2013) (noting that a damages action under the FHA "sounds basically in tort" and applying a proximate cause requirement), cert. denied sub nom. City of Newport Beach v. Pac. Shores Props., LLC, 135 S. Ct. 436 (2014); Samaritan Inns, Inc. v. Dist. of Columbia, 114 F.3d 1227, 1234-35 (D.C. Cir. 1997) (same); see also Miami Valley Fair Hous. Ctr., Inc. v. Connor Grp., No. 3:10-CV-83, 2015 WL 853193, at *4-5 (S.D. Ohio Feb. 26, 2015) (holding that a fair housing organization must establish proximate cause because it is "one step removed from the discrimination," so its claimed damages must be "t[ied] to the defendant's alleged wrongdoing").[8]

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[8]We recognize that our conclusion that a private cause of action under the FHA contains a proximate cause requirement may be in some tension with the Supreme Court's general holding that statutory standing under the FHA extends as broadly as permitted under Article III. As we've explained, Article III's only causation requirement is that the plaintiff's injury be "fairly traceable" to the defendant's unlawful conduct. Defs. of Wildlife, 504 U.S. at 590 (quoting Allen, 468 U.S. at 751). Plainly, proximate cause is not an element of constitutional standing. See Lexmark, 134 S. Ct. at 1391 n.6. Nonetheless, we do not interpret Trafficante, Gladstone, or Havens to have read a proximate cause requirement out of the statute. Nothing in those cases decided, or even asked, whether

The Bank argues that proximate cause creates a "directness requirement" within the FHA, and that the City's pleadings, therefore, fail because they do

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some kind of proximate cause requirement is an element of an FHA claim.

To the extent those cases addressed Article III standing, they were concerned with what we call today the first Lujan factor: injury in fact -- an injury that is "concrete and particularized," and "actual or imminent." Defs. of Wildlife, 504 U.S. at 560. In Trafficante, the plaintiffs were two tenants, one black, one white, who had lost the benefit of interracial associations; causation was not discussed. 409 U.S. at 206; see Gladstone, 441 U.S. at 112-13 (characterizing Trafficante's holding as turning on Article III's injury-in-fact requirement). In Gladstone, causation was again not considered, except for a suggestion in dicta that evidence of the defendant's business practices might "be relevant to the establishment of the necessary causal connection between the alleged conduct and the asserted injury" in later stages of litigation. Id. at 114 n.29. Finally, in Havens, the Court did not discuss causation; "the question before [the Court] [was] whether injury in fact ha[d] been sufficiently alleged." 455 U.S. at 376 (emphasis added). Nothing in the holdings of these cases speaks to the existence of a proximate cause requirement, let alone bars us from interpreting the FHA to require a showing of proximate cause for damages actions.

Moreover, it seems inconceivable that the FHA would not contain a proximate cause requirement of some sort, because the alternative would produce seemingly absurd results. Requiring nothing but Article III traceability for FHA damages actions would create an open-ended fount of liability, particularly for plaintiffs (like the City of Miami) who are at least one step removed from the defendant's discriminatory conduct. This, of course, is why proximate cause is a classic element of a tort action -- and, as we have said, the Supreme Court has observed that damages claims under the FHA are essentially tort actions. Indeed, this statutory interpretation, rooted in the nature of the cause of action, has now been embraced by all three circuit courts of appeals to have addressed the issue.

not allege that the Bank's actions directly harmed the City. The City does not accuse the Bank of discriminating against the City itself in its lending practices; instead, it claims that the Bank's discriminatory practices led the City to lose tax revenue and spend money combating the resulting blight. This harm, the Bank claims, is too indirect to have been proximately caused by the Bank's conduct.

We disagree. The Bank proposes to draw its proximate cause test from other statutory contexts, primarily from the Supreme Court's interpretation of the Racketeer Influenced and Corrupt Organizations Act (RICO) in Holmes, 503 U.S. 258. In that case, the Court read a proximate cause requirement into RICO, reasoning that its statutory language (granting a cause of action to anyone injured "by reason of a violation of 18 U.S.C. § 1692, see 18 U.S.C. § 1964(c)) mirrored language used in the antitrust statutes, which had long been interpreted to contain such a requirement. See Holmes, 503 U.S. at 267-68. One of the "central elements" of proximate cause in the RICO and antitrust context, the Court explained, is "a demand for some direct relation between the injury asserted and the injurious conduct alleged." Id. at 268-69; see, e.g., Simpson v. Sanderson Farms, Inc., 744 F.3d 702, 712 (11th Cir. 2014) (applying the Holmes directness requirement in a civil RICO case); cf. Lexmark, 134 S. Ct. at 1390 (appearing to endorse a directness requirement by noting that a claim "ordinarily" fails to allege proximate cause when "the harm [to the plaintiff] is purely derivative of 'misfortunes visited upon a third person by the defendant's acts' (quoting Holmes, 503 U.S. at 268)). The Bank argues that

proximate cause in the FHA context must be the same.

But the Supreme Court in Lexmark made clear that proximate cause is not a one-size-fits-all analysis: it can differ statute by statute. Thus, for example, Lexmark involved an allegation of false advertising under the Lanham Act brought by one company against a rival. As the Court noted, all such injuries "are derivative of those suffered by consumers who are deceived by the advertising." 134 S. Ct. at 1391. A claim based on such a derivative injury might not satisfy proximate cause under a statute that strictly requires a direct connection between the plaintiff's harm and the defendant's conduct. Nevertheless, the Court found that the claim satisfied proximate causation under the Lanham Act: because the statute authorized suit "only for commercial injuries," the derivative nature of the plaintiff's claim could not be "fatal" to the plaintiff's cause of action. Id. In other words, the statutory context shaped the proximate cause analysis. So, too, in this case.

The FHA's proximate cause requirement cannot take the shape of the strict directness requirement that the Bank now urges on us: indeed, such a restriction would run afoul of Supreme Court and Eleventh Circuit caselaw allowing entities who have suffered indirect injuries -- that is, parties who have not themselves been directly discriminated against -- to bring a claim under the FHA. Notably, the Village of Bellwood in Gladstone was permitted to bring an FHA claim even though it was not directly discriminated against. 441 U.S. at 109-11. So, too, was the non-profit corporation in Havens, which alleged impairment of its organizational mission and

a drain on its resources, not direct discrimination. 455 U.S. at 378-79. And in our own Circuit, the same is true of the plaintiff in Baytree, a non-minority developer who challenged a city's zoning decision as racially discriminatory. 873 F.2d at 1408-09. Indeed, the Supreme Court in Havens instructed that the distinction between direct and indirect harms -- or, as the Havens Court characterized it, the difference "between 'third-party' and 'first-party' standing" -- was "of little significance in deciding" whether a plaintiff had a cause of action under the FHA. 455 U.S. at 375; see Pac. Shores Props., 730 F.3d at 1168 n.32 ("The fact that FHA plaintiffs' injuries must be proximately caused by the defendants' discriminatory acts does not, of course, mean that defendants are not liable for foreseeable, but indirect, effects of discrimination.").

In examining RICO and the antitrust statutes, the Supreme Court has looked to the statutory text and legislative history to determine the scope and meaning of the proximate cause requirement. See Holmes, 503 U.S. at 265-68. Neither party has presented any argument based on these considerations. However, the Supreme Court has observed that the language of the FHA is "broad and inclusive," Trafficante, 409 U.S. at 209, and must be given "a generous construction," id. at 212. What's more, while the Supreme Court has cautioned that "[t]he legislative history of the [the FHA] is not too helpful" in determining the scope of its cause of action, it observed that the FHA's proponents "emphasized that those who were not the direct objects of discrimination had an interest in ensuring fair housing, as they too suffered." Id. at 210. In

short, nothing in the text or legislative history of the FHA supports the Bank's cramped interpretation.

As we've noted, damages claims arising under the FHA have long been analogized to tort claims. Thus, we look to the law of torts to guide our proximate cause analysis in this context. We agree with the City that the proper standard, drawing on the law of tort, is based on foreseeability.[9] See Dobbs, Hayden & Bublick, supra, § 199, at 686 ("Professional usage almost always reduces proximate cause issues to the question of foreseeability. The defendant must have been reasonably able to foresee the kind of harm that was actually suffered by the plaintiff "); see also Pac. Shores Props., 730 F.3d at 1168 & n.32 (noting in the FHA context that "the doctrine of proximate cause serves merely to protect defendants from unforeseeable results" of their unlawful conduct, and that defendants are "liable for foreseeable effects of discrimination.").

Under this standard, the City has made an adequate showing. The complaint alleges that the Bank had access to analytical tools as well as published reports drawing the link between predatory lending practices "and their attendant harm," such as premature foreclosure and the resulting costs to the City, including, most notably, a reduction in property tax revenues. Complaint at 8-9, 26-27, 32-33, 47-48, 50. The district court rejected the plaintiffs' claim partly because it failed to "allege

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[9] We acknowledge that the Supreme Court has rejected foreseeability as the touchstone of proximate cause "in the RICO context," Hemi Grp., LLC v. City of New York, 559 U.S. 1, 12 (2010), but we have already explained why that statutory context does not govern our analysis today.

facts that isolate Defendants' practices as the cause of any alleged lending disparity." City of Miami v. Bank of America Corp., 2014 WL 3362348, at *5. But as we have said even in the more restrictive RICO context, proximate cause "is not the same thing as . sole cause." Cox v. Adm'r U.S. Steel & Carnegie, 17 F.3d 1386, 1399 (11th Cir.), opinion modified on reh'g, 30 F.3d 1347 (11th Cir. 1994); see Dobbs, Hayden & Bublick, supra, § 198, at 683 ("[The proximate cause requirement] does not mean that the defendant's conduct must be the only proximate cause of the plaintiff's injury."). Instead, a proximate cause is "a substantial factor in the sequence of responsible causation." Cox, 17 F.3d at 1389 (quotation omitted). The City has surely alleged that much: it claims that the Bank's discriminatory lending caused property owned by minorities to enter premature foreclosure, costing the City tax revenue and municipal expenditures. Although there are several links in that causal chain, none are unforeseeable. See Dobbs, Hayden & Bublick, supra, § 204, at 705 (explaining that intervening causes become "superseding" only if they are unforeseeable). And, as we noted in the context of Article III traceability, the City has provided the results of regression analyses that purport to draw the connection between the Bank's conduct toward minority borrowers, foreclosure, and lost tax revenue. This empirical data is sufficient to "raise the pleadings above the speculative level." Dekalb Cnty. v. HSBC N. Am. Holdings, Inc., No. 1:12-CV-03640-SCJ, 2013 WL 7874104, at *7 (N.D. Ga. Sept. 25, 2013); see Twombly, 550 U.S. at 555; cf. Maya v. Centex Corp., 658 F.3d 1060, 1073 (9th Cir. 2011) ("Expert testimony can be used to explain the causal connection between defendants'

actions and plaintiffs' injuries, even in the context of other market forces.").[10]

In the face of longstanding caselaw drawn from the Supreme Court and this Court permitting FHA claims by so-called third party plaintiffs who are injured by a defendant's discrimination against another person, it is clear that the harm the City claims to have suffered has "a sufficiently close connection to the conduct the statute prohibits." Lexmark, 134 S. Ct. at 1390. Of course, whether the City will be able to actually prove its causal claims is

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[10] The Bank also makes much of City of Cleveland v. Ameriquest Mortgage Sec., Inc., 615 F.3d 496 (6th Cir. 2010), a Sixth Circuit case brought by the City of Cleveland against various financial entities that it claimed were responsible for a large portion of the Cleveland subprime lending market and a foreclosure crisis that devastated local neighborhoods. Id. at 498-99. The Sixth Circuit held that the city's claims did not adequately plead proximate cause, in part because "the cause of the alleged harms is a set of actions (neglect of property, starting fires, looting, and dealing drugs) that is completely distinct from the asserted misconduct (financing subprime loans)." Id. at 504. The defendants insist that the same analysis applies here. But City of Cleveland is readily distinguishable. Most glaringly, the city in that case brought a state-law public nuisance claim, not an FHA claim. Id. at 498. Ohio law had adopted its proximate cause test from Holmes, which we have already explained is inapposite, and the court in no way suggested that an identical proximate cause requirement existed in the FHA. Id. at 503. Moreover, the defendants in that case "did not originate the subprime mortgages at issue" -- rather, they "finance[ed], purchas[ed], and pool[ed] vast amounts of these loans," creating mortgage-backed securities that were then sold to the public. Id. at 499. It was this financial activity that Cleveland challenged as a public nuisance, not the original issuance of the loans. Thus, the Cleveland defendants' activity was one step further removed than the activity of the Bank in this case, which issued the allegedly predatory loans in the first instance.

another matter altogether. At this stage, it is enough to say that the City has adequately pled proximate cause, as required by the FHA.

3. Statute of Limitations

The FHA also requires that claims be filed "not later than 2 years after the occurrence or the termination of an alleged discriminatory housing practice." 42 U.S.C. § 3613(a)(1)(A). The district court concluded, and the parties do not contest, that an FHA claim for issuing a discriminatory loan begins to run from the date that the loan closes. City of Miami v. Bank of America Corp., 2014 WL 3362348, at *6; see Estate of Davis v. Wells Fargo Bank, 633 F.3d 529, 532 (7th Cir. 2011) (calculating FHA statute of limitations for a predatory loan beginning with the date the loan was issued).

This lawsuit was filed on December 13, 2013. Thus, in a traditional statute of limitations analysis, the complained-of loans must have closed after December 13, 2011. The City maintains that it has alleged a pattern and practice of discriminatory lending by the Bank, and its claims, therefore, qualify for the application of the "continuing violation doctrine." The district court disagreed, finding that the City had not alleged facts sufficient to support its allegation that the specific practices continued into the statutory period. We remain unpersuaded.

The complaint alleged that the City had identified 3,326 discriminatory loans issued by the Bank in Miami between 2004 and 2012 that had resulted in foreclosure. Complaint at 50-51. It then listed ten specific property addresses that it claimed "corresponded to these foreclosures," but provided no

specific information (e.g., the type of loan, the characteristics that made it predatory or discriminatory, when the loan closed, when the property went into foreclosure, etc.) for each address. Id. at 51. (The City also claimed that "with the benefit of discovery," it "anticipate[d] be[ing] able to identify more foreclosures resulting from the issuance of discriminatory loans." Id. at 51 n.35.) As the district court noted, however, the City failed to allege that any of the loans closed within the limitations period (between December 13, 2011, and December 13, 2013).

On appeal, the City does not contend that its original complaint was adequate; rather, it argues that it could readily cure the statute of limitations flaws if given the opportunity. In support, the City points to the proposed amended complaint that it provided along with its motion for reconsideration and motion to amend. The district court acknowledged that the City might indeed be able to remedy its statute of limitations deficiencies with an amendment, but the court never considered whether the City's proposed amended complaint was sufficient, because it concluded that the City remained outside the statute's zone of interests and had not adequately pled proximate cause. Because the district court erred both as to the zone of interests and proximate cause, we are obliged to remand the cause of action in the first instance to determine whether or not the City could remedy any statute of limitations deficiency. We decline to evaluate the City's proposed amended complaint before the district court has had the opportunity to do so. See Adinolfe v. United Techs. Corp., 768 F.3d 1161, 1172 (11th Cir. 2014) ("[A]s an appellate

tribunal, we are generally limited to reviewing arguments and issues that have been raised and decided in the district court.").

In order to provide guidance on remand, we offer this discussion of the application of the continuing violation doctrine to this case. In addition to noting that the City never alleged that any particular loan closed within the limitations period (a deficiency that may well be cured in an amended pleading), the district court also seemingly held that the City's claim could not qualify for the application of the continuing violation doctrine because the complaint did not identify a singular and uniform practice of continuing conduct.

The continuing violation doctrine applies to "the continued enforcement of a discriminatory policy," and allows a plaintiff to "sue on otherwise time-barred claims as long as one act of discrimination has occurred . during the statutory period." Hipp v. Liberty Nat. Life Ins. Co., 252 F.3d 1208, 1221 (11th Cir. 2001) (per curiam). The governing law on the continuing violation doctrine in the FHA context is drawn from the Supreme Court's decision in Havens. In that case, three plaintiffs[11] -- a black individual looking to rent an apartment, a black "tester," and a white "tester"[12] -- brought FHA claims. Havens, 455 U.S. at 368. Their lawsuit was filed on January 9, 1979. Coles v. Havens Realty Corp., 633 F.2d 384, 386 (4th Cir. 1980), aff'd in part, rev'd in part sub

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[11]As discussed earlier, there was also a fourth plaintiff: a non-profit corporation. Havens, 455 U.S. at 367. Its claim is not relevant to the discussion of the statute of limitations.

[12]The testers posed as renters for the purpose of collecting evidence of unlawful racial steering practices.

nom. Havens, 455 U.S. 363. At the time, the limitations period under the FHA was 180 days. The plaintiffs identified five separate incidents of discrimination: on March 14, March 21, March 23, July 6, and July 13 of 1978. Only the incident on July 13 was within the limitations period. See Havens, 455 U.S. at 380.

On March 14, March 21, and March 23, the two testers asked Havens about available apartments. Each time, the black tester was told that nothing was available, while the white tester was told that there were vacancies. Id. at 368. On July 6, the black tester made a further inquiry and was told that there were no vacancies, while another white tester (not a party to the suit) was told that there were openings. Id. Finally, on July 13 -- the only incident within the limitations period -- the black plaintiff who was genuinely looking to rent asked Havens about availability and was falsely told that there was nothing. Id.

All three plaintiffs alleged that Havens's practices deprived them of the benefits of living in an integrated community. Id. at 369. The Supreme Court held that the claims were not time-barred for any of the plaintiffs because they alleged a "continuing violation" of the FHA, despite the fact that only one discriminatory incident was within the limitations window, and that incident involved only one of the three plaintiffs. Id. at 380-81. "[A] 'continuing violation' of the Fair Housing Act should be treated differently from one discrete act of discrimination," the Court explained. Id. at 380. The Court reasoned that "[w]here the challenged violation is a continuing one," there is no concern about the staleness of the plaintiff's claims. Id.

Moreover, the Court emphasized "the broad remedial intent of Congress embodied in the [Fair Housing] Act" in rejecting the defendants' "wooden application" of the statute of limitations. Id. The Court concluded: "where a plaintiff, pursuant to the Fair Housing Act, challenges not just one incident of conduct violative of the Act, but an unlawful practice that continues into the limitations period, the complaint is timely when it is filed within [the limitations period, starting at] the last asserted occurrence of that practice." Id. at 380-81.

The case before us -- if the City is able to identify FHA violations within the limitations period -- is on all fours with Havens. The City has alleged "not just one incident . but an unlawful practice that continues into the limitations period." Id. at 381. The City alleges that the Bank has engaged in a longstanding practice of discriminatory lending in which it extends loans to minority borrowers only on more unfavorable terms than those offered to white borrowers. The predatory qualities of the loans have taken slightly different forms over time (e.g., higher interest rates, undisclosed back-end premiums, higher fees, etc.), but the essential discriminatory practice has remained the same: predatory lending targeted at minorities in the City of Miami. The fact that the burdensome terms have not remained perfectly uniform does not make the allegedly unlawful practice any less "continuing." The various instances of discriminatory lending comprise the practice, which continues into the limitations period. At least at the pleading stage, this is enough to plausibly invoke the continuing violation doctrine. See City of Los Angeles, 2014 WL 6453808, at *7 ("The City's allegations of discrimination under the

FHA relate to Chase's lending practices overall, not a specific type of loan issued. The Court finds the allegations sufficient to apply the continuing violations doctrine."); City of Los Angeles v. Citigroup Inc., 24 F Supp. 3d 940, 952 (C.D. Cal. 2014) ("In this case, [the plaintiff] is alleging a pattern and practice of 'discriminatory lending' on the part of Defendants over at least an eight-year period. While the types of loans that Defendants allegedly issued to minority borrowers may have changed during the relevant time period, [the plaintiff] alleges that they remained high-risk and discriminatory. This is sufficient to apply the continuing-violation doctrine."); accord City of Los Angeles v. Bank of Am. Corp., No. CV 13-9046 PA (AGRx), 2014 WL 2770083, at *10 (C.D. Cal. June 12, 2014); City of Los Angeles v. Wells Fargo & Co., 22 F. Supp. 3d 1047, 1058-59 (C.D. Cal. 2014); see also Hargraves v. Capital City Mortg. Corp., 140 F. Supp. 2d 7, 17-19 (D.D.C. 2000) (applying the continuing violation doctrine to an FHA claim challenging a mortgage company's practice of predatory and discriminatory lending, where that practice took various forms, including charging exorbitant interest rates, fraudulent fees and penalties, inadequate risk assessment, and elevated rates of foreclosure).

4. Remand

Resolving a plaintiff's motion to amend is "committed to the sound discretion of the district court," but that discretion "is strictly circumscribed" by Rule 15(a)(2) of the Federal Rules of Civil Procedure, which instructs that leave to amend should be "freely give[n] when justice so requires." Gramegna v. Johnson, 846 F.2d 675, 678 (11th Cir. 1988); see also Shipner v. E. Air Lines, Inc., 868 F.2d

401, 407 (11th Cir. 1989) ("[U]nless a substantial reason exists to deny leave to amend, the discretion of the district court is not broad enough to permit denial").

As we have explained, we find that the City is within the FHA's zone of interests and has sufficiently alleged proximate causation between its injury and the Bank's conduct. The district court's refusal to allow the City to amend, and its conclusion that any amended complaint would be futile, was legal error and therefore an abuse of discretion. On remand, the City should be granted leave to amend its complaint.

We also note that while this appeal was pending, the Supreme Court handed down a decision that may materially affect the resolution of this case. In Texas Department of Housing & Community Affairs v. Inclusive Communities Project, Inc., 135 S. Ct. 2507 (2015), a non-profit organization brought a Fair Housing Act claim against the Texas Department of Housing and Community Affairs, alleging that the Department's allocation of low-income housing tax credits caused racial segregation by "granting too many credits for housing in predominantly black inner-city areas and too few in predominantly white suburban neighborhoods." Id. at 2514. The claim was brought on a disparate-impact theory, alleging not that the Department's practice was driven by a discriminatory intent, but rather that it had a "'disproportionately adverse effect on minorities' and [was] otherwise unjustified by a legitimate rationale." Id. at 2513 (quoting Ricci v. DeStefano, 557 U.S. 557, 577 (2009)). The question before the Court was whether disparate-impact claims are

cognizable under the FHA. The Court held that they are. Id. at 2525.

However, in dicta, the Court announced the "proper[] limit[s]" on disparate impact liability under the FHA, needed both to avoid serious constitutional issues and to protect potential defendants from abusive disparate-impact claims. Id. at 2522; see id. at 2522-24. Specifically, the Court noted that defendants must be allowed to "explain the valid interest served by their [challenged] policies," id. at 2522, and that courts should insist on a "robust causality requirement" at the "prima facie stage" linking the defendant's conduct to the racial disparity, id. at 2523. The Court emphasized that disparate-impact claims must be aimed at "removing artificial, arbitrary, and unnecessary barriers," rather than "displac[ing] valid governmental and private priorities." Id. at 2524 (quoting Griggs v. Duke Power Co., 401 U.S. 424, 431 (1971)) (alterations adopted). Any newly pled complaint must take into account the evolving law on disparate impact in the FHA context. Without the new pleadings before us, we have no occasion to pass judgment on how Inclusive Communities will impact this case, but we flag the issue both for the parties and for the district court on remand.

C. Unjust Enrichment Claim

As for the City's state law unjust enrichment claim, we agree with the district court and affirm its ruling. In deciding this claim, we are obliged to apply Florida's substantive law. See Erie R.R. Co. v. Tompkins, 304 U.S. 64, 78 (1938). Where the highest state court has not provided the definitive answer to a question of state law, "we must predict how the

highest court would decide this case," looking to the decisions of the lower state courts for guidance. See Molinos Valle Del Cibao, C. por A. v. Lama, 633 F.3d 1330, 1348 (11th Cir. 2011). Under Florida law, the doctrine of unjust enrichment (sometimes called a "contract implied in law," "quasi-contract," and various other terms) governs the situation in which one party has conferred a valuable benefit on another in the absence of a contract, but "under circumstances that ma[ke] it unjust to retain it without giving compensation." See Magwood v. Tate, 835 So. 2d 1241, 1243 (Fla. Dist. Ct. App. 2003) (quoting Commerce P'ship 8098 Ltd. P'ship v. Equity Contracting Co., 695 So. 2d 383, 386 (Fla. Dist. Ct. App. 1997)). There are three elements of an unjust enrichment claim under Florida law: first, the plaintiff has conferred a benefit on the defendant; second, the defendant voluntarily accepted and retained that benefit; and, finally, the circumstances are such that it would be inequitable for the defendants to retain the benefit without paying for it. Virgilio v. Ryland Grp., Inc., 680 F.3d 1329, 1337 (11th Cir. 2012) (citing Fla. Power Corp. v. City of Winter Park, 887 So. 2d 1237, 1241 n.4 (Fla. 2004)). As for the first element, the benefit must be conferred directly from the plaintiff to the defendant. Century Senior Servs. v. Consumer Health Ben. Ass'n, Inc., 770 F. Supp. 2d 1261, 1267 (S.D. Fla. 2011) (citing Peoples Nat'l Bank of Commerce v. First Union Nat'l Bank of Fla., N.A., 667 So. 2d 876, 879 (Fla. Dist. Ct. App. 1996)). "At the core of the law of restitution and unjust enrichment is the principle that a party who has been unjustly enriched at the expense of another is required to make restitution to the other."

Gonzalez v. Eagle Ins. Co., 948 So. 2d 1, 3 (Fla. Dist. Ct. App. 2006).

The City alleged that the Bank "received and utilized benefits derived from a variety of municipal services, including police and fire protection, as well as zoning ordinances, tax laws, and other laws and services that have enabled [the Bank] to operate and profit within the City of Miami." Complaint at 54. It went on to allege that "[a]s a direct and proximate result of [the Bank's] predatory lending practices, [the Bank] ha[s] been enriched at the City's expense" by utilizing those benefits while denying the City tax revenue and costing it in additional municipal expenditures required to address foreclosed properties. The Bank "failed to remit those wrongfully obtained benefits," the complaint claimed. The City also alleged that it had paid for the Bank's externalities (the costs of the harm caused by the discriminatory lending patterns), that the Bank was aware of this benefit, and that its retention would be unjust. Id. at 55.

The district court dismissed the claim without prejudice, in part because the City had not alleged that it had conferred a direct benefit onto the Bank to which they were not otherwise legally entitled, as required under Florida law. As for the denied tax revenues, the district court noted that such a denial is not a direct benefit conferred on the Bank by the City. As for the municipal services, the district court found that they did not create an unjust enrichment claim for two reasons. First, the municipal services were not benefits conferred directly on the Bank -- the services were provided to the residents of Miami, not to the Bank, and any benefit the Bank received was merely derivative. Second, the City had not

adequately alleged that the Bank, as a Miami property owner, was not legally entitled to those services. We agree.

The City maintains that its complaint states a cause of action under Florida law, but it has not cited to a single Florida case. The City relies primarily on White v. Smith & Wesson Corp., 97 F. Supp. 2d 816 (N.D. Ohio 2000), where the mayor and City of Cleveland sued various gun manufacturers and dealers alleging, inter alia, unjust enrichment on the ground that the city had conferred a benefit on the defendants by paying for their "externalities": "the costs of the harm caused by Defendants' failure to incorporate safety devices into their handguns and negligent marketing practices." Id. at 829. The Ohio law of unjust enrichment essentially tracks Florida law. See id. ("In order to maintain a cause of action for unjust enrichment under Ohio law, a plaintiff must allege: (1) a benefit conferred by a plaintiff upon a defendant; (2) knowledge by the defendant of the benefit; and, (3) retention of the benefit by the defendant under circumstances where it would be unjust to do so without payment."). Without citing to a single Ohio state court case in its unjust enrichment analysis, the district court determined that plaintiffs had stated such a claim under Ohio law.

The City cites only two other cases, neither of which were from Florida. See City of Boston v. Smith & Wesson Corp., No. 199902590, 2000 WL 1473568, at *18 (Mass. Super. Ct. July 13, 2000) (allowing an unjust enrichment claim against gun manufacturers under Massachusetts law on the same reasoning as was employed in White); City of New York v. Lead Indus. Ass'n, Inc., 190 A.D.2d 173,

177 (N.Y. App. Div. 1993) (permitting the City of New York's claim for restitution against manufacturers of lead-based paint for the City's expenditures in abating the hazard of lead-based paint and treating the victims). None of these cases, obviously, governs our application of Florida law.

We have not found any case -- and the City has provided none -- supporting an unjust enrichment claim of this type under Florida law. First, the City alleges that the Bank must pay the City for the tax revenue the City has been denied due to the Bank's unlawful lending practices. Although a deprivation of tax revenue may create an injury in fact under Article III, such an injury does not fit within the unjust enrichment framework. The missing tax revenue is in no way a benefit that the City has conferred on the Bank. The City has provided no explanation for this incongruity on appeal.

Instead, the City focuses on the municipal services -- including police, firefighters, zoning ordinances, and tax laws -- that it claims it would not have had to provide if not for the Bank's predatory lending. But this version of the unjust enrichment claim fares no better, for three independent reasons. For starters, it's not clear that municipal expenditures are among the types of benefits that can be recovered by unjust enrichment under Florida law. We have found no Florida case in which a municipality recovered its expenditures on an unjust enrichment theory. Indeed, at least one case suggests that a municipality cannot recover such expenditures without express statutory authorization, which the City has never alleged. See Penelas v. Arms Tech., Inc., No. 99-1941 CA-06, 1999 WL 1204353, at *2 (Fla. Cir. Ct. Dec. 13, 1999) ("[T]he County's claim for damages, based on

the costs to provide 911, police, fire and emergency services effectively seeks reimbursement for expenditures made in its performance of governmental functions. Costs of such services are not, without express legislative authorization, recoverable by governmental entities."), aff'd, 778 So. 2d 1042 (Fla. Dist. Ct. App. 2001).

Moreover, the benefits provided by these municipal services were not directly conferred on the Bank, as is required for an unjust enrichment claim under Florida law. See, e.g., Virgilio, 680 F.3d at 1337 (affirming the dismissal of an unjust enrichment claim under Florida law because the plaintiffs only "'indirectly' conferred a benefit on Defendants"); Extraordinary Title Servs. v. Fla. Power & Light Co., 1 So. 3d 400, 404 (Fla. Dist. Ct. App. 2009) (affirming the dismissal of an unjust enrichment claim because the plaintiff "ha[d] not conferred a direct benefit" on the defendant). As the district court correctly noted, municipal police and fire services directly benefit the residents and owners of homes in the City of Miami, not the financial institution that holds the loans on those properties. And tax laws and zoning ordinances are quite clearly not direct benefits conferred on Bank of America: they are laws of general applicability that, indeed, apply to all residents of Miami. No Florida caselaw suggests that these benefits are direct enough to sustain an unjust enrichment claim.

Finally, the City has failed to allege facts to show that circumstances are such that it would be inequitable for the Bank to retain such benefits without compensation. Even assuming that these municipal services did confer a cognizable benefit on the Bank as the owner of foreclosed property, the

City does not challenge the district court's determination that the Bank was legally entitled to those services. Cf. State Farm Fire & Cas. Co. v. Silver Star Health & Rehab, 739 F.3d 579, 584 (11th Cir. 2013) ("If an entity accepts and retains benefits that it is not legally entitled to receive in the first place, Florida law provides for a claim of unjust enrichment."). The City has provided no arguments and cited no Florida caselaw explaining why the Bank would not be entitled to police and fire protection like any other property owner.

The Florida Supreme Court has not ruled on whether an unjust enrichment claim exists under these circumstances. But given the complete lack of supporting Florida caselaw, we decline to invent a novel basis for unjust enrichment under Florida law today. Accordingly, we affirm the district court's order dismissing the City's unjust enrichment claim.

IV Conclusion

Nothing we have said in this opinion should be taken to pass judgment on the ultimate success of the City's claims. We hold only that the City has constitutional standing to bring its FHA claims, and that the district court erred in dismissing those claims with prejudice on the basis of a zone of interests analysis, a proximate cause analysis, or the inapplicability of the continuing violation doctrine.

The judgment of the district court is AFFIRMED in part, REVERSED in part, and REMANDED for further proceedings consistent with this opinion.

APPENDIX C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 13-24508-CIV-DIMITROULEAS

CITY OF MIAMI,
a Florida municipal corporation,
Plaintiff,

VS

WELLS FARGO & CO., and
WELLS FARGO BANK, N.A.,
Defendants.

ORDER DENYING MOTION FOR RECONSIDERATION

THIS CAUSE is before the Court upon Plaintiff City of Miami ("Plaintiff" or "City")'s Motion for Reconsideration and Leave to File First Amended Complaint, filed herein on July 21, 2014. [DE 50]. The Court has carefully considered the Motion [DE 50], Defendants Wells Fargo & Co. and Wells Fargo Bank, N.A. ("Defendants")'s Opposition [DE 51], Plaintiffs Reply [DE 52], and is otherwise fully advised in the premises.

By separate Order entered today in *City of Miami v. Bank of America Corp, et al.*, case no. 13-cv-24506-WPD, the Court entered an Order Denying Motion for Reconsideration. [DE 76]. That Order is adopted and incorporated herein. Based upon the Court's

discussion and analysis set forth in that Order, it is **ORDERED AND ADJUDGED** as follows:

1. Plaintiff's Motion for Reconsideration and Leave to File First Amended Complaint [DE 50] is **DENIED**;
2. If Plaintiff chooses to file an amended complaint as to its unjust enrichment claim, the deadline to do so is extended to September 15, 2014.

DONE AND ORDERED in Chambers at Ft. Lauderdale, Broward County, Florida, this 8th day of September, 2014.

/s/ William P. Dimitrouleas
WILLIAM P DIMITROULEAS
United States District Judge

Copies to:

Counsel of Record

APPENDIX D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 13-24506-CIV-DIMITROULEAS

CITY OF MIAMI,
a Florida municipal corporation,
Plaintiff,

vs

BANK OF AMERICA CORPORATION;
BANK OF AMERICA, N.A.;
COUNTRYWIDE FINANCIAL CORPORATION;
COUNTRYWIDE HOME LOANS; and
COUNTYWIDE BANK, FSB,
Defendants.

ORDER DENYING MOTION FOR RECONSIDERATION

THIS CAUSE is before the Court upon Plaintiff City of Miami ("Plaintiff" or "City")'s Motion for Reconsideration and Leave to File First Amended Complaint, filed herein on July 21, 2014. [DE 72]. The Court has carefully considered the Motion [DE 72], Defendants Bank of America Corporation ("BoA"), Bank of America, N.A., Countrywide Financial Corporation, Countrywide Home Loans, and Countrywide Bank FSB ("Defendants")'s Opposition [DE 74], Plaintiffs Reply [DE 75], and is otherwise fully advised in the premises.

On December 13, 2013, Plaintiff filed this suit pursuant to the Fair Housing Act of 1968 ("FHA"), as amended, 42 U.S.C. § 3601, *et seq.*, to seek redress for injuries allegedly caused by Defendants' pattern or practice of illegal and discriminatory mortgage lending. [DE 1]. Specifically, Plaintiff sought injunctive relief and damages for financial injuries due to foreclosures on Defendants' loans in minority neighborhoods and to minority borrowers that were the result of Defendants' discriminatory lending practices. Plaintiff sought damages based on reduced property tax revenues based on: (a) the decreased value of the vacant properties themselves; and (b) the decreased value of properties surrounding the vacant properties. Plaintiff also sought damages based on the expenditures of municipal services that have been and will be required to remedy the blight and unsafe and dangerous conditions which exist at vacant properties that were foreclosed as a result of Defendants' illegal lending practices.

Defendants moved to dismiss the Complaint on the grounds that Plaintiff lacked standing under the FHA, Plaintiffs FHA claim was time-barred by the statute of limitations, and the Complaint failed to state a claim upon which relief can be granted. After extensive briefing and oral argument, the Court entered an Order Granting Motion to Dismiss on July 8, 2014. *See* [DE 71].

Therein, the Court held that the City did not meet the zone of interests nor the proximate causation requirements for standing to sue under the FHA. *See Lexmark Intern., Inc. v. Static Control Components, Inc.*, 134 S. Ct. 1377, 1387 (2014). In making that ruling, the Court was guided by the

Eleventh Circuit's opinion in *Nasser v. City of Homewood*, 671 F. 2d 432 (11th Cir. 1982). The policy and purpose of the Fair Housing Act is to "provide, within constitutional limitations, for fair housing throughout the United States." 42 U.S.C.A. § 3601. After a thorough review of the Complaint, the Court explained that Plaintiff alleged merely economic injuries -- Plaintiff sought relief for economic injury from the reduction in tax revenue from the decrease in property values and for injury caused by direct expenditures that the City spent due to the foreclosures. The Court held that neither of these economic injuries is "somehow affected by a racial interest." Thus, the Court found that the City of Miami's claims fell outside of the zone of interests protected by the FHA, as the City's complaints of decreased tax revenue and increased municipal services are "so marginally related to the purposes implicit in the statute that it cannot reasonably be assumed that Congress intended to permit suit." *Thompson v. N. Am. Stainless, LP*, 131 S. Ct. 863, 870 (2011). Additionally, the Court held that proximate causation for standing was not adequately alleged, as Plaintiff's allegations failed to demonstrate that the Defendants' alleged practices of redlining and reverse redlining caused the foreclosures to occur. Further, the Court noted that the independent actions of a multitude of non-parties -- a historic drop in home prices and a global recession, the decisions and actions of third parties, such as loan services, government entities, competing sellers, and uninterested buyers -- break the causal chain, thwarting the City's ability to trace a foreclosure to Defendants' activity. *See Fla. Family Policy Council v. Freeman*, 561 F.3d 1246, 1253 (11th

Cir. 2009) (casual chain cannot rely on "independent action of some third party not before the court"). Moreover, the Court held that Plaintiff's offered vague and generalized allegations of harm, failing to allege facts demonstrating that the foreclosures caused the City to be harmed. Finally, the Court held that the Complaint was also subject to dismissal on statute of limitations grounds, as the Complaint contained no allegations of any loan that was closed within the relevant limitations period. The Complaint merely alleged a generalized policy of discrimination, failing to allege facts evidencing that each type of alleged discriminatory practice continued into the limitations period. The Court dismissed Count I, violation of the FHA, with prejudice, explaining that, while it is possible that an amendment could remedy the statute of limitations problems the Court identified with Plaintiff's Complaint, it would not remedy the Plaintiff's lack of standing to bring this action under the FHA.

The Court's July 8, 2014 Order Granting Motion to Dismiss also held that Plaintiff failed to allege sufficient facts to support its unjust enrichment claim. That claim suffered the same insufficient causal allegations that were fatal to Plaintiff's FHA claim. Moreover, the City failed to allege sufficient facts demonstrating that the City conferred any benefit on the Defendants to which they were not legally entitled. The Court dismissed Count II, unjust enrichment, without prejudice with leave to amend in accordance with the Court's Order.

Rather than appeal the Court's July 8, 2014 Order Granting Motion to Dismiss challenging this Court's application of *Lexmark* and *Nassar* to the City's FHA claim, or file an amended complaint as to Plaintiff's

unjust enrichment claim in accordance with the dismissal Order, Plaintiff has moved for reconsideration.

"[R]econsideration of a previous order is an extraordinary remedy to be employed sparingly." *Burger King Corp. v. Ashland Equities, Inc.*, 181 F. Supp. 2d 1366, 1370 (S.D. Fla. 2002) (citing *Mannings v. School Board of Hillsborough County*, 149 F.R.D. 235, 235 (M.D. Fla. 1993)). For a court to reconsider its prior judgment the moving party must present facts or law of a "strongly convincing nature" that would induce a court to reverse its prior decision. *Id.* (citing *Sussman v. Salem Saxon & Nielsen, P.A.*, 153 F.R.D. 689, 694 (M.D. Fla 1994)). Three major grounds justify reconsideration: "(1) an intervening change in the controlling law; (2) the availability of new evidence; and (3) the need to correct clear error or prevent manifest injustice." *Burger King*, 181 F Supp. 2d at 1369. "A motion for reconsideration cannot be used to relitigate old matters, raise argument or present evidence that could have been raised prior to the entry of judgment." *Wilchombe v. TeeVee Toons, Inc.*, 555 F.3d 949, 957 (11th Cir. 2009) (internal quotation marks omitted).

Plaintiff has not presented strongly convincing arguments in the instant reconsideration Motion that would cause the Court to reconsider its prior Order. The arguments in the Motion are ones that the Plaintiff already made or that it could have, but chose not to, in the extensive process of briefing, supplemental briefing, and oral argument related to Defendants' Motion to Dismiss. Arguing that this Court's reasoning was flawed is not enough for a motion for reconsideration. Furthermore, to the

extent that the Plaintiff alternatively seeks to amend its FHA claim to assert it has a generalized non-economic interest in having an integrated community and in racial diversity -- claims it never made and amendments it did not previously raise or offer despite ample opportunity -- these new matters are improperly raised as grounds for reconsideration.[1]

Finally, regarding Plaintiff's unjust enrichment claim, the Court stated in its July 8, 2014 Order Granting Motion to Dismiss:

> While it does not appear that Plaintiff can overcome the deficiencies in its claim for unjust enrichment, in an abundance of caution, the Court will dismiss this count without prejudice, with leave to amend in accordance with the analysis set forth in this Order. If Plaintiff chooses to file an amended complaint, the deadline to do so is July 21, 2014. As currently pled, Plaintiffs unjust enrichment claim is pled as a supplemental jurisdiction state law claim. The Court takes no position, at this time, as to whether it would exercise supplemental jurisdiction over a complaint that only contains a state law claim.

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[1] Moreover, sprinkling in allegations that the City has a generalized interest in racial integration falls far short of alleging facts sufficient to demonstrate that Defendants' lending practices adversely affected the racial diversity or integration of the City, nor do those generalized allegations appear to be connected in any meaningful way to the purported loss of tax revenue and increase in municipal expenses allegedly caused by Defendants' lending practices.

See case no. 13-24506 at [DE 71], p. 14, n. 2. Thus, the Court has already granted Plaintiff permission to file an amended complaint as to its unjust enrichment claim. If Plaintiff chooses to file such an amended complaint, the Court will extend the deadline to do so until September 15, 2014. Any arguments Defendants have raised in the instant briefing regarding the sufficiency of the unjust enrichment claim set forth in Plaintiffs proposed amended complaint may be reasserted in response to the amended complaint, if one is timely filed.

Based upon the foregoing, it is **ORDERED AND ADJUDGED** that Plaintiff's Motion for Reconsideration and Leave to File First Amended Complaint [DE 72] is **DENIED.**

DONE AND ORDERED in Chambers at Ft. Lauderdale, Broward County, Florida, this 8th day of September, 2014.

/s/ William P. Dimitrouleas
WILLIAM P. DIMITROULEAS
United States District Judge

Copies to:
Counsel of record

APPENDIX E

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 13-24508-CIV-DIMITROULEAS

CITY OF MIAMI,
a Florida municipal corporation,
Plaintiff,

vs

WELLS FARGO & CO., and
WELLS FARGO BANK, N.A.,
Defendants.

ORDER GRANTING MOTION TO DISMISS

THIS CAUSE is before the Court upon the Motion to Dismiss (the "Motion") [DE 31], filed herein on March 18, 2014 by Defendants Wells Fargo & Co. and Wells Fargo Bank, N.A. ("Defendants"). The Court has carefully considered the Motion [DE 31], the Plaintiff City of Miami ("Plaintiff" or "City")'s Opposition [DE 39], the Defendants' Reply [DE 40], the parties' supplemental filings, and is otherwise fully advised in the premises.

By separate Order entered today in *City of Miami v. Bank of America Corp, et al.*, case no. 13-cv-24506-WPD, the Court entered an Order Granting Motion to Dismiss. [DE 71]. That Order is adopted and incorporated herein. Based upon the Court's discussion and analysis set forth in that Order, it is **ORDERED AND ADJUDGED** as follows:

1. Defendants' Motion to Dismiss [DE 31] is hereby **GRANTED**;
2. Count I – Violation of the FHA is hereby **DISMISSED WITH PREJUDICE**[1];
3. Count II – Unjust enrichment is hereby **DISMISSED WITHOUT PREJUDICE**[2];
4. Defendants' Motion for Oral Argument [DE 47] is **DENIED AS MOOT.**

DONE AND ORDERED in Chambers at Ft. Lauderdale, Broward County, Florida, this 9th day of July, 2014.

/s/ William P. Dimitrouleas
WILLIAM P. DIMITROULEAS
United States District Judge

Copies to:
Counsel of record

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[1]While it is possible that an amendment could remedy the statute of limitations problems the Court has identified with Plaintiff's Complaint, it would not remedy the Plaintiff's lack of standing to bring this action under the FHA.

[2]While it does not appear that Plaintiff can overcome the deficiencies in its claim for unjust enrichment, in an abundance of caution, the Court will dismiss this count without prejudice, with leave to amend in accordance with the analysis set forth this Order. If Plaintiff chooses to file an amended complaint, the deadline to do so is July 21, 2014. As currently pled, Plaintiff's unjust enrichment claim is pled as a supplemental jurisdiction state law claim. The Court takes no position, at this time, as to whether it would exercise supplemental jurisdiction over a complaint that only contains a state law claim.

APPENDIX F

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 13-24506-CIV-DIMITROULEAS

CITY OF MIAMI,
a Florida municipal corporation,
Plaintiff,

vs

BANK OF AMERICA CORPORATION;
BANK OF AMERICA, N.A.;
COUNTRYWIDE FINANCIAL CORPORATION;
COUNTRYWIDE HOME LOANS; and
COUNTYWIDE BANK, FSB,
Defendants.

ORDER GRANTING MOTION TO DISMISS

THIS CAUSE is before the Court upon a Motion to Dismiss (the "Motion") [DE 33], filed herein on February, 28, 2014 by Defendants Bank of America Corporation ("BoA"), Bank of America, N.A., Countrywide Financial Corporation, Countrywide Home Loans, and Countrywide Bank FSB ("Defendants"). Plaintiff City of Miami ("Plaintiff' or "City") has filed an Opposition [DE 37]. Both parties also filed supplemental briefing. The Court has carefully considered the Motion [DE 33], the Plaintiffs Opposition [DE 37], the Defendants' Reply [DE 41], and the Plaintiffs Surreply [DE 48], and the oral arguments made at the June 20, 2014, hearing. The Court is otherwise fully advised in the premises.

I. BACKGROUND

This suit is brought pursuant to the Fair Housing Act of 1968 ("FHA"), as amended, 42 U.S.C. § 3601, *et seq.*, to seek redress for injuries allegedly caused by Defendants' pattern or practice of illegal and discriminatory mortgage lending. Comp. [DE 1] ¶ 2. Specifically, Plaintiff seeks injunctive relief and damages for financial injuries due to foreclosures on Defendants' loans in minority neighborhoods and to minority borrowers that are the result of Defendants' discriminatory lending practices, including both intentional discrimination and disparate impact discrimination. ¶ 2. Plaintiff alleges that beginning in 2004, Defendants began to flood historically under-served minority communities with high cost and other "predatory" loans, allegedly constituting "reverse redlining." ¶ 7.

Plaintiff alleges that Defendants engaged in both redlining and reverse redlining. ¶ 10. Plaintiff further alleges that Defendants' pattern and practice of reverse redlining has caused an excessive and disproportionately high number of foreclosures on Defendants' loans in the minority neighborhoods of Miami. ¶ 11. Plaintiff also alleges that Defendants' practice of traditional redlining has also caused an excessive and disproportionately high number of foreclosures on Defendants' loans in the minority neighborhoods of Miami. ¶ 12. The Complaint alleges that, since 2004, Defendants have engaged in a continuing and unbroken pattern and practice of mortgage discrimination in Miami that still exists today. ¶ 10.

The Complaint further alleges that Defendants would have comparable foreclosure rates in minority

and white communities if they had properly and uniformly applied underwriting practices in both areas. ¶ 13. The Complaint alleges that Defendants' practice of failing to underwrite minority borrowers' applications properly, and of putting these borrowers into loans which: (1) have more onerous terms than loans given to similarly situated white borrowers; and (2) the borrowers cannot afford, leads to foreclosures. ¶ 13.

Plaintiff's Complaint includes data and statistical analysis, as well as statements from Confidential Witnesses to support its claims. For example, a regression analysis that allegedly controls for creditworthiness and other factors is offered to show that an African-American BoA borrower was 1.581 times more likely to receive a predatory loan than a white borrower, and a Latino borrower was 2.807 times more likely to receive such a loan. ¶ 15. Plaintiff alleges that Defendants have intentionally targeted predatory practices at African-American and Latino neighborhoods and residents by targeting these neighborhoods, without regard for credit history, for high-cost loans, for increased interest rates, points, and fees, for disadvantageous loan terms, and for unfair and deceptive lending practices in connection with marketing and underwriting mortgage loans. ¶ 163. Further, the Complaint alleges that the discretionary lending policies and practice of targeting minorities, who received predatory loan terms regardless of creditworthiness, have caused and continue to cause foreclosures in Miami. ¶ 164.

Plaintiff further alleges that the discriminatory practices and resulting foreclosures in the minority neighborhoods have inflicted significant, direct, and

continuing financial harm to the City. ¶ 19. Plaintiff seeks damages based on reduced property tax revenues based on: (a) the decreased value of the vacant properties themselves; and (b) the decreased value of properties surrounding the vacant properties. ¶ 20. Plaintiff also seeks damages based on the expenditures of municipal services that have been and will be required to remedy the blight and unsafe and dangerous conditions which exist at vacant properties that were foreclosed as a result of BoA's illegal lending practices. ¶ 20.

Defendants now move to dismiss the Complaint on the grounds that (1) Plaintiff lacks standing[1]; (2) Plaintiff's FHA claim is time-barred by the statute of limitations; and (3) the Complaint fails to state a claim upon which relief can be granted. For the reasons set forth below, the Court grants Defendants' Motion to Dismiss.

II. LEGAL STANDARD

As a threshold matter, the Court must determine if jurisdiction exists before proceeding to the merits of the case. *Sinochem Int'l Co. v. Malay Int'l Shipping Corp*, 549 U.S 422, 431 (2007) ("Without jurisdiction the court cannot proceed at all in any cause; it may not assume jurisdiction for the purposes of deciding the merits of the case." (internal quotations omitted)). "The burden for establishing federal subject matter jurisdiction rests with the party bringing the claim." *Sweet Pea Marine, Ltd. v. APJ Marine, Inc.*, 411 F 3d 1242, 1247 (11th Cir. 2005). Attacks on subject matter jurisdiction under Rule 12(b)(1) are either facial or factual. *Garcia v.*

[1]In Defendants' Reply and Plaintiff's Surreply, the parties briefed the "zone of interests" issue.

Copenhaver, Bell & Assocs., MD.'s, P.A., 104 F 3d 1256, 1260 (11th Cir. 1997). "Facial attacks on the complaint require the court merely to look and see if the plaintiff has sufficiently alleged a basis of subject matter jurisdiction, and the allegations in his complaint are taken as true for the purposes of the motion." *Garcia*, F 3d at 1260 (internal quotations omitted). "Factual attacks, on the other hand, challenge the existence of subject matter jurisdiction in fact, irrespective of the pleadings, and matters outside the pleadings, such as testimony and affidavits, are considered." *Garcia*, F.3d at 1261 (internal quotations omitted). However, "[w]here the jurisdictional issues are intertwined with the substantive merits, the jurisdictional issues should be referred to the merits." *Eaton v. Dorchester Dev., Inc.*, 692 F. 2d 727, 733 (11th Cir. 1982). Thus, when "an attack on subject matter jurisdiction also implicates an element of the cause of action," the court should apply a Rule 12(b)(6) standard. *Garcia*, 104 F 3d at 1261.

Regardless of the standard, "federal courts cannot exercise jurisdiction over cases where the parties lack standing." *Fla. Wildlife Fed'n, Inc. v. S. Fla. Water Mgmt. Dist.*, 647 F 3d 1296, 1302 (11th Cir. 2011). This principle exists because there is "a constitutional limitation of federal-court jurisdiction to actual cases or controversies" and "[o]ne element of the case-or-controversy requirement is that plaintiffs must establish that they have standing to sue." *Clapper v. Amnesty Intern. USA*, 133 S. Ct. 1138, 1146 (2013) (internal citations and quotations omitted). To establish standing, "a plaintiff must show (1) it has suffered an 'injury in fact' that is (a) concrete and particularized and (b) actual or

imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Fla. Wildlife Fed'n, Inc.*, 647 F 3d at 1302 (citing *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 180-181 (2000)). "If at any point in the litigation the plaintiff ceases to meet all three requirements for constitutional standing, the case no longer presents a live case or controversy, and the federal court must dismiss the case for lack of subject matter jurisdiction." *Id.*

Where a plaintiff brings a cause of action pursuant to a federal statute, the plaintiff must establish both Article III standing and statutory standing. *See, e.g.*, *United States v. $38,000.00 in U.S. Currency*, 816 F.2d 1538, 1544 (11th Cir. 1987). Article III of the United States Constitution requires that a litigant have standing to invoke the power of a federal court. *See supra.* In contrast, statutory standing requires the plaintiff to establish that he falls within the class of plaintiffs whom Congress has authorized to sue under that statute. *Lexmark Intern., Inc. v. Static Control Components, Inc.*, 134 S. Ct. 1377, 1387 (2014).

III. DISCUSSION

1. Count I: Violations of the Federal Fair Housing Act

A. Standing under the Fair Housing Act

In order to have standing for any statutory cause of action, the zone of interests and proximate causation requirements must be met. *Lexmark*, 134 S. Ct. at 1391. Upon application of the appropriate 12(b)(6)

standard, this Court finds that neither requirement is met in this case.

i. Zone of Interests

The Supreme Court has made clear that the zone of interests test should be applied to any cause of action being brought under a statute. Courts are to "presume that a statutory cause of action extends only to plaintiffs whose interests 'fall within the zone of interests protected by the law invoked.'" *Lexmark*, 134 S. Ct. at 1388 (citing *Allen v. Wright*, 468 U.S. 737, 751 (1984)). The Supreme Court has stated that the zone of interests test "applies to all statutorily created causes of action; that it is a 'requirement of general application'; and that Congress is presumed to legist[e] against the background of the zone-of-interests limitation." *Lexmark*, 134 S. Ct. at 1388 (citing *Bennett v. Spear*, 520 U.S. 154, 163 (1977); *see also Holmes v. Securities Investor Protection Corporation*, 503 U.S. 258, 287-288 (Scalia, J., concurring in judgment)). The test bars a plaintiffs claims when his "'interests are so marginally related to or inconsistent with the purposes implicit in the statute that it cannot reasonably be assumed that' Congress authorized that plaintiff to sue." *Lexmark*, 134 S. Ct. at 1389 (citing *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, 132 S. Ct. 2199, 2210 (2012)).

The Fair Housing Act § 812 provides that after the expiration of a period for administrative remedies,

> the person aggrieved may commence a civil action in any appropriate United States district court, against the respondent named in the complaint, to enforce the rights granted or protected by this subchapter, insofar as

> such rights relate to the subject of the complaint.

In *Gladstone Realtors v. Village of Bellwood*, 441 U.S. 91, 108-09 (1979), the Supreme Court held that § 812 provides "parallel remedies to precisely the same prospective plaintiffs" as does § 810.

This Court's[2] determination of whether Plaintiff has standing to sue under the FHA is guided by the Eleventh Circuit's opinion in *Nasser v. City of Homewood*, 671 F 2d 432 (11th Cir. 1982). In that case, the Eleventh Circuit interpreted the FHA's zone of interests in light of the Supreme Court's decisions regarding the topic. In *Nasser*, the plaintiffs brought a claim under the FHA and claimed that they were injured by the diminution in

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[2]The district court in *City of Los Angeles v. Bank of America Corp.*, 2014 WL 2770083 (C.D. Cal. Jun. 12, 2014) declined to expand the zone of interests requirement into the analysis of standing under the FHA. *See id.* at *8 ("To the extent that Defendants argue that post- *Thompson* and post- *Lexmark*, a plaintiff needs to meet a separate 'zone of interests' requirement in order to have standing to bring a FHA claim, the Supreme Court has not yet applied that requirement to the FHA. Although the Supreme Court may explicitly require a separate 'zone of interests' statutory standing analysis under the FHA if presented with the issue in the future, this Court declines to do so here."). Unlike the district court in *City of Los Angeles*, this Court is in the Eleventh Circuit so it is bound by the Eleventh Circuit's opinion in *Nasser v. City of Homewood*, 671 F. 2d 432 (11th Cir. 1982), which does apply this requirement to the FHA. *See infra.* If it turns out that the zone of interests for purposes of standing under the FHA is as broad as Article III standing, this court's ruling may very well be different as to the zone of interests analysis, but that would not change the deficiencies in Plaintiff's allegations of proximate cause, as discussed in the following section.

value of their property as a result of the defendants' conduct. *Nasser*, 671 F 2d at 436.

In deciding *Nasser*, the Eleventh Circuit considered *Trafficante v. Metropolitan Life Ins. Co.*, 409 U.S. 205 (1972). In that case, the Supreme Court found that the plaintiffs, a white and a black resident of an apartment complex who alleged that they had lost the social and professional benefits of living in an integrated community, had standing and were within the zone of interests protected by the FHA. The *Nasser* decision noted that, in *Trafficante*,

> The reference to 'the person aggrieved' showed 'a congressional intention to define standing as broadly as is permitted by Article III of the Constitution' insofar as tenants of the same housing unit that is charged with discrimination are concerned.

Nasser, 671 F 2d at 437 (citing *Trafficante* 409 U.S. at 209).

The Eleventh Circuit also considered *Gladstone Realtors v. Village of Bellwood*, 441 U.S. 91 (1979). In *Nasser*, the Eleventh Circuit explained that the *Gladstone* decision "said that a showing of injury to the plaintiffs' community as in *Trafficante* coupled with economic injury to the value of the plaintiffs' homes was sufficient to establish standing under the Fair Housing Act." *Nasser*, 671 F. 2d at 437 (citing *Gladstone*, 441 U.S. at 114-15). However, the Eleventh Circuit continued:

> There is no indication that the Court intended to extend standing, beyond the facts before it, to plaintiffs who show no more than an economic interest which is not somehow affected by a racial interest. There is no

> suggestion, either in the Act or its legislative history, that Congress intended to entrust the enforcement of the Fair Housing Act to such plaintiffs.

Nasser, 671 F 2d at 437 Accordingly, the Eleventh Circuit held that the property owner plaintiffs lacked standing under the FHA: "The policy behind the Fair Housing Act emphasizes the prevention of discrimination in the provision of housing on the basis of 'race, color, religion, sex, or national origin.' . Simply stated, the plaintiffs offered no evidence that they possess 'rights granted' by the Fair Housing Act. Their interest in value of the property in no way implicates values protected by the Act." *Nasser*, 671 F 2d at 437

In this case, the Plaintiff alleges merely economic injuries. [DE 1] ¶¶ 133-159. Plaintiff prays for relief for economic injury from the reduction in tax revenue from the decrease in property values. ¶¶ 133-150. The Plaintiff also prays for relief for injury caused by direct expenditures that the City spent due to the foreclosures. ¶¶ 151-159. Neither of these economic injuries is "somehow affected by a racial interest." In fact, the injury alleged here is very similar to the injury decided to be outside of the FHA's zone of interests in *Nasser*: an economic loss from a decrease in property values.

The policy and purpose of the Fair Housing Act is to "provide, within constitutional limitations, for fair housing throughout the United States." 42 U.S.C.A. § 3601. The City's complaints of decreased tax revenue and increased municipal services are "so marginally related to the purposes implicit in the statute that it cannot reasonably be assumed that

Congress intended to permit suit." *Thompson v. N. Am. Stainless, LP*, 131 S. Ct. 863, 870 (2011). Therefore, this Court finds that the City of Miami's claims fall outside of the zone of interests protected by the FHA; Plaintiff lacks standing to sue under the statute.

ii. Proximate Causation

Courts are also generally to "presume that a statutory cause of action is limited to plaintiffs whose injuries are proximately caused by violations of the statute." *Lexmark*, 134 S. Ct. at 1390. "The judicial remedy cannot encompass every conceivable harm that can be traced to alleged wrongdoing." *Associated Gen. Contractors of Cal., Inc. v. Carpenters*, 459 U.S. 519, 536 (1983). "Proximate-cause analysis is controlled by the nature of the statutory cause of action. The question it presents is whether the harm alleged has a sufficiently close connection to the conduct the statute prohibits." *Lexmark*, 134 S. Ct. at 1390. As the Supreme Court explained, "the proximate-cause requirement generally bars suits for alleged harm that is 'too remote' from the defendant's unlawful conduct. That is ordinarily the case if the harm is purely derivative of 'misfortunes visited upon a third person by the defendant's acts.'" *Id.* (citing *Holmes v. Securities Investor Protection Corporation*, 503 U.S. 258, 268-269 (1992)). A plaintiff lacks standing where a causal chain is too attenuated and relies on the conduct of third parties. *See Wehunt v. Ledbetter*, 875 F. 2d 1558, 1566-67 (11th Cir. 1989).

In this case, upon consideration of the allegations of the City's Complaint, the Court holds that proximate causation for standing is not adequately

alleged. In order to establish proximate causation, Plaintiff must demonstrate that the Defendants' alleged redlining and reverse redlining caused the foreclosures to occur. Here, Plaintiff does not allege facts that isolate Defendants' practices as the cause of any alleged lending disparity. Against the backdrop of a historic drop in home prices and a global recession, the decisions and actions of third parties, such as loan services, government entities, competing sellers, and uninterested buyers, thwart the City's ability to trace a foreclosure to Defendants' activity. The independent actions of this multitude of non-parties break the causal chain. *See Fla. Family Policy Council v. Freeman*, 561 F. 3d 1246, 1253 (11th Cir. 2009) (casual chain cannot rely on "independent action of some third party not before the court").

Even if this first step of proximate causation were shown, Plaintiff would then have to complete the causal connection in its claim by demonstrating that the foreclosures caused the City to be harmed. Instead, the City offers vague and generalized allegations of harm (Comp. ¶¶ 53, 61, 75, 103, 109), statistics and studies that are either not limited to the City of Miami (Comp. ¶¶ 78 (relying on data from Chicago); 84-85 (relying on nationwide data); 16, 37-41, 8081, 87-88, 110-12), not limited to Defendants' practices (Comp. ¶¶ 11, 19, 22, 80-85, 87-88, 110-11), or do not control for relevant credit factors that undoubtedly affect lending practices (Comp. ¶¶ 119-22; 11, 107-08, 124-25). Although statistical correlations are asserted, they are insufficient to support a causation claim. Moreover, Defendants are not responsible for the actions of intervening actors such as squatters, vandals or criminals that

damaged foreclosed properties causing the City's municipal costs to rise. Plaintiff's claim is entirely derivative, emphasizing how inextricably linked the possible effect of reverse redlining is with other economic forces acting upon the market.

B. Statute of Limitations

While the Court is dismissing this action for lack of standing, *see supra*, it also holds that the Complaint is subject to dismissal on statute of limitations grounds.

A limitations clock begins to run "as soon as facts supportive of the cause of action are or should be apparent to a reasonably prudent person similarly situated." *Telesca v. Vill. of Kings Creek Condo. Ass'n*, 390 F App'x 877, 882 (11th Cir. 2010). For purposes of the FHA, "[a]n aggrieved person may commence a civil action in an appropriate United States district court or State court not later than 2 years after the occurrence or termination of an alleged discriminatory housing practice to obtain appropriate relief with respect to such discriminatory housing practice " 42 U.S.C. § 3613(a)(1)(A). An FHA claim for extending a discriminatory loan begins to run from the date of the loan closing. *Id.*; *Phan v. Accredited Home Lenders Holding Co.*, 2010 WL 1268013, at *3 (M.D. Fla. Mar. 20, 2010). This suit was filed December 13, 2013. *See* [DE 1]. However, of the ten specific loans securing the identified properties alleged in the Complaint, Plaintiff fails to allege that any of those loans were made later than 2008. Comp. ¶ 160. There are no allegations of specific loans in the Complaint that are alleged to have closed in the two

years leading up to the date the suit was filed. Comp. ¶ 160.

While Plaintiff argues that their claim is not time-barred pursuant to the continuing violation doctrine, Plaintiff has failed to allege sufficient facts to support its conclusory allegation that the specific discriminatory loan practices complained of continued into the statutory period. The Complaint contains no allegations of any loan that was closed within the relevant limitations period. Moreover, the Complaint alleges several different types of discriminatory actions or practices in which Defendants engaged, such as redlining and reverse redlining. However, the City has not alleged facts evidencing that each type of alleged discriminatory practice continued into the limitations period.[3] Rather the Complaint merely alleges a generalized policy of discrimination, which is insufficient to state a FHA claim.

2. Count II: Unjust Enrichment

When one party has conferred a valuable benefit on another in the absence of a contract, either express or implied, the doctrine of unjust enrichment creates a fictional contract, sometimes called a quasi-contract or contract implied in law, to the extent necessary to avoid clear injustice. *Adventist Health System/Sunbelt Inc. v. Medical Say. Ins. Co.*, 2004 WL 6225293 at *6 (M.D. Fla. Mar. 8, 2004). Under

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[3]The City does not allege a uniform practice of continuing conduct—that is, a particular form of discrimination by a single actor—that was the type of "discrete unlawful practice" that "continued" and so could be a basis for application of the continuing violations doctrine. *Smithers v. Wynne*, 319 F. App'x 755, 757 (11th Cir. 2008).

Florida Law, a claim for unjust enrichment has three elements: (1) the plaintiff has conferred a benefit on the defendant; (2) the defendant voluntarily accepted and retained that benefit; and (3) the circumstances are such that it would be inequitable for the defendants to retain it without paying the value thereof. *Virgilio v. Ryland Group, Inc.*, 680 F 3d 1329, 1337 (11th Cir. 2010) (citing *Fla. Power Corp. v. City of Winter Park*, 887 So. 2d 1237, 1241 n. 4 (Fla. 2004)). The benefit must be conferred directly. *Century Senior Serv. v. Con. Health Benefit Ass.*, 770 F. Supp. 2d 1261, 1267 (S.D. Fla. 2011). Moreover, the benefit accepted by defendants must be one that defendants were "not legally entitled to receive in the first place." *State Farm Fire Cas. Co. v. Silver Star Health and Rehab*, 739 F 3d 579, 584 (11th Cir. 2013). Finally, the scope of damages is assessed in terms of the value of the benefit conferred upon the recipient, not the cost to the provider of producing that benefit and the fair market value of it. *Tooltrend, Inc. v. CMT Utensili, SRL*, 198 F.3d 802, 807 n. 5 (11th Cir. 1999).

Here, Plaintiff does not allege sufficient facts to support its unjust enrichment claim. As a preliminary matter, Plaintiff's unjust enrichment claim fails due to the same insufficient causal allegations that were fatal to Plaintiffs FHA claim. Plaintiff alleges that the Defendants were enriched at the City's expense by utilizing benefits conferred by the City "[a]s a direct and proximate result of Defendants' predatory lending practices." Comp. ¶ 174. However, Plaintiff fails to adequately allege the requisite causal connection between the terms of Defendants' loans and the City's decreased tax

revenue and increased municipal services. *See supra*.

Moreover, the City does not allege that it conferred a direct benefit onto Defendants to which they were not otherwise legally entitled. First, Plaintiff fails to allege that the City conferred any *direct* benefit on the Defendants. "[Den]ying the City revenues it had properly expected through property and other tax payments" is certainly not a direct benefit conferred from the City to Defendants. *See* Comp. ¶ 174. Additionally, the municipal services allegedly provided in the Complaint benefit property owners and residents of the City of Miami. Comp. ¶ 172. Plaintiff alleges that Defendants were aware of and took advantage of the services and laws provided by the City of Miami in order to further their business. Comp. ¶ 173. However, any benefit received by Defendants in this manner would be derivative and insufficient for an unjust enrichment claim. *Century Senior*, 770 F. Supp. 2d at 1267. Next, Plaintiff fails to allege sufficient facts that demonstrate that the City conferred any benefit on the Defendants *to which they were not legally entitled*. Municipal services provided by the City are benefits accruing to the public at large. Plaintiff fails to allege facts to show that the Defendants, to the extent that they owned property in the City of Miami, were not also entitled to the benefit of these municipal services. Although Plaintiff argues that the City paid for Defendants' externalities and this constitutes unjust enrichment, this Court disagrees with this position. *See e.g.*, *Adventist Health Sys.*, 2004 WL 6225293 at *6 n. 8 (M.D. Fla. March 8, 2004) (dismissing unjust enrichment claim because "[e]quity has never required compensation for positive externalities.").

For the above reasons, this Court dismisses Plaintiffs Count II: Unjust Enrichment.

IV. CONCLUSION

Based upon the foregoing, it is **ORDERED AND ADJUDGED** as follows:

1. Defendants' Motion to Dismiss [DE 33] is hereby **GRANTED**;
2. Count I – Violation of the FHA is hereby **DISMISSED WITH PREJUDICE**[4];
3. Count II – Unjust enrichment is hereby **DISMISSED WITHOUT PREJUDICE**.[5]

DONE AND ORDERED in Chambers at Ft. Lauderdale, Broward County, Florida, this 8th day of July, 2014.

/s/ William P. Dimitrouleas
WILLIAM P DIMITROULEAS
United States District Judge

Copies to: Counsel of record

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[4]While it is possible that an amendment could remedy the statute of limitations problems the Court has identified with Plaintiff's Complaint, it would not remedy the Plaintiff's lack of standing to bring this action under the FHA.

[5]While it does not appear that Plaintiff can overcome the deficiencies in its claim for unjust enrichment, in an abundance of caution, the Court will dismiss this count without prejudice, with leave to amend in accordance with the analysis set forth this Order. If Plaintiff chooses to file an amended complaint, the deadline to do so is July 21, 2014. As currently pled, Plaintiff's unjust enrichment claim is pled as a supplemental jurisdiction state law claim. The Court takes no position, at this time, as to whether it would exercise supplemental jurisdiction over a complaint that only contains a state law claim.

APPENDIX G

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 14-14544-BB

CITY OF MIAMI,
a Florida municipal corporation,
Plaintiff Appellant,

versus

WELLS FARGO & CO.,
WELLS FARGO BANK, N.A.,
Defendants Appellees.

Appeal from the United States District Court
for the Southern District of Florida

Date Filed: 11/05/2015

BEFORE: MARCUS and WILSON, Circuit Judges, and SCHLESINGER,* District Judge.

PER CURIAM:

The petition(s) for panel rehearing filed by WELLS FARGO & CO., WELLS FARGO BANK, N.A. is DENIED.

ENTERED FOR THE COURT:

/s/
UNITED STATES CIRCUIT JUDGE

*Honorable Harvey E. Schlesinger, United States District Judge for the Middle District of Florida, sitting by designation.

APPENDIX H

STATUTORY PROVISIONS INVOLVED

FHA § 802, 42 U.S.C. § 3602, provides in pertinent part:

Definitions

As used in this subchapter—

* * * *

(i) "Aggrieved person" includes any person who—

(1) claims to have been injured by a discriminatory housing practice; or

(2) believes that such person will be injured by a discriminatory housing practice that is about to occur.

* * * *

FHA § 804, 42 U.S.C. § 3604, provides in pertinent part:

Discrimination in the sale or rental of housing and other prohibited practices

As made applicable by section 3603 of this title and except as exempted by sections 3603(b) and 3607 of this title, it shall be unlawful—

(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin.

(b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or

facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin.

* * * *

FHA § 805, 42 U.S.C. § 3605, provides in pertinent part:

Discrimination in residential real estate-related transactions

(a) In general

It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, handicap, familial status, or national origin.

(b) "Residential real estate-related transaction" defined

As used in this section, the term "residential real estate-related transaction" means any of the following:

(1) The making or purchasing of loans or providing other financial assistance—
   (A) for purchasing, constructing, improving, repairing, or maintaining a dwelling; or
   (B) secured by residential real estate.

(2) The selling, brokering, or appraising of residential real property.

* * * *

FHA § 813, 42 U.S.C. § 3613, provides in pertinent part:

Enforcement by private persons

(a) Civil action

(1) (A) An aggrieved person may commence a civil action in an appropriate United States district court or State court not later than 2 years after the occurrence or the termination of an alleged discriminatory housing practice, or the breach of a conciliation agreement entered into under this subchapter, whichever occurs last, to obtain appropriate relief with respect to such discriminatory housing practice or breach.

* * * *

Supreme Court, U.S.
FILED
MAY 20 2016
OFFICE OF THE CLERK

No. 15-1112

IN THE

Supreme Court of the United States

WELLS FARGO & CO., ET AL.,
Petitioners,

v.

CITY OF MIAMI, a Florida municipal corporation,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

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BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the term "aggrieved" in the Fair Housing Act imposes a zone-of-interests requirement that requires more than an interest or injury arguably protected by the statute?

2. Whether the City is an "aggrieved person" under the Fair Housing Act?

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BRIEF FOR RESPONDENT IN OPPOSITION

Respondent City of Miami, Florida respectfully requests that this Court deny the petition for writ of certiorari that seeks review of the decision of the United States Court of Appeals for the Eleventh Circuit in this case.

In its Petition, Wells Fargo & Co. and certain of its subsidiaries (collectively, "the Bank") seek this Court's intervention at the same time they will be either answering the Third Amended Complaint or filing a new motion to dismiss, due May 24, 2016, in the United States District Court for the Southern District of Florida. The City has every expectation that the Bank will opt to file a new motion to dismiss. Both the effort before this Court and the anticipated one before the District Court seek to relieve the Bank from answering the Complaint filed by the City of Miami for ongoing violations of the Fair Housing Act ("FHA"), 42 U.S.C. §§ 3601 *et seq*. The Bank speculates that there is "little chance" of a circuit conflict on the questions it presents, but urges this Court to review because the decision below is "plainly wrong" and because a decision now would promote efficiency. Pet. 12, 16. However, there is no warrant to use this flawed vehicle to examine the issues presented or do so prematurely.

COUNTERSTATEMENT OF THE CASE

On December 13, 2013, the City of Miami filed a detailed, 62-page Complaint against the Bank, Petitioners here, alleging violations of the FHA by engaging in discriminatory mortgage lending practices that resulted in a disproportionate and excessive number of defaults by minority homebuyers

and resulting in significant, direct, and continuing financial harm to the City. The defendants named were Wells Fargo & Co. and Wells Fargo Bank, N.A. The Complaint alleged the discriminatory lending practices at issue are aimed at disproportionately "placing vulnerable, underserved [minority] borrowers in loans they cannot afford" and then "when a minority borrower who previously received a predatory loan sought to refinance the loan, . [the Bank] refused to extend credit at all, or on equal terms as refinancing similar loans issued to white borrowers." Compl. ¶¶ 8, 12, *City of Miami v. Wells Fargo & Co.*, No. 1:13-cv-24508 (S.D. Fla. Dec. 13, 2013), ECF No. 1. As the Eleventh Circuit correctly characterized the allegations, the City alleged "the bank targeted black and Latino customers in Miami for predatory loans that carried more risk, steeper fees, and higher costs than those offered to identically situated white customers, and created internal incentive structures that encouraged employees to provide these types of loans." Pet. App. 21a.

The Complaint alleged that a regression analysis of available data reported by the Bank demonstrated that African-American borrowers were 4.321 times more likely to receive a predatory loan than a white borrower with similar underwriting and borrower characteristics. *Id.* at 6a. Latino borrowers were 1.576 more likely to receive such loans. *Id.*

The Complaint also provided facts supporting allegations that these loan practices foreseeably resulted in foreclosures, did so more rapidly for African-American and Latino borrowers than whites, and that the foreclosures were caused by the discriminatory loan practices. Pet. App. 4a-5a. As a result of these practices, the Complaint alleged that

property values of the homes vacated and of other homes in the same neighborhoods diminished and caused a loss of tax revenues to the City. *Id.* at 8a; Compl. ¶¶ 156-170. Moreover, the Complaint alleged that a Hedonic regression analysis can calculate the City's loss attributable to the Bank's discriminatory lending practices and separate out other potential causes. Pet. App. 6a. In addition, the City suffered other economic damages beyond lost tax revenues because it has had to expend additional monies on municipal services to address problems of vagrancy, criminal activity, and threats to the public health and safety arising at these properties because of their foreclosed status, as well as to remediate newly blighted neighborhoods. *Id.* at 8a; Compl. ¶¶ 172, 189. To make concrete any generalized allegations, the City preliminarily identified 999 discriminatory loans issued by the Bank between 2004-2012 that resulted in foreclosure and, in the Complaint, provided sample addresses to 10 homes. Pet. App. 12a.

A second cause of action in the Complaint alleged that the Bank unjustly enriched itself by taking advantage of "benefits conferred by the City and, rather than engaging in lawful lending practices," engaged in racially discriminatory mortgage practices that "denied the City revenues it had properly expected through property and other tax payments and by costing the City additional monies for services it would not have had to provide in the neighborhoods affected by foreclosures due to predatory lending, absent the Defendants' unlawful activities." *Id.* at 4a; Compl. ¶ 194. The Bank filed a Motion to Dismiss on March 18, 2014. Pet. App. 81a.

On July 9, 2014, the District Court granted the Bank's motion to dismiss with prejudice with respect

to the allegations based on the FHA, while the cause of action premised on unjust enrichment was dismissed without prejudice.[1] *Id.* at 82a. The District Court reached its conclusion based on a reading of an Eleventh Circuit decision that no party had cited, *Nasser v. City of Homewood*, 671 F.2d 432 (11th Cir. 1982). *Id.* at 90a.

On July 21, 2014, the City timely moved for reconsideration, proffering a proposed First Amended Complaint to address issues raised in the dismissal order with respect to its FHA claims and to provide additional details deemed lacking by the court with respect to its unjust enrichment claim. *Id.* at 72a, 11a. It argued that the court had misconstrued *Nasser*. On September 9, 2014, the District Court denied the motion for reconsideration, while providing additional time to file a new complaint based on the claim for unjust enrichment alone. *Id.* at 73a. The City, choosing not to split its causes of action, declined to file a single-cause of action complaint. The City filed a timely notice of appeal October 7, 2014. *Id.* at 12a.

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[1] The District Court order referenced and incorporated its same-day order in a similar case brought by the City against Bank of America. Pet. App. 81a. In the subsequent appeal in the Eleventh Circuit, the cases against Bank of America and Wells Fargo, along with a third one against Citigroup, Inc., were argued together. Though separate opinions were issued in each, the Bank of America opinion was designated as the lead and most comprehensive opinion. *See* Pet. App. 12a; 20a-71a. Bank of America has filed a separate petition for certiorari. No. 15-1111. Wells Fargo has asked this Court to consider granting both petitions and consolidating the two cases. Pet. 6 n.2.

The Eleventh Circuit held the City had constitutional standing to pursue its FHA claims, that the City met the zone of interests requirement under the FHA, and that the allegations were sufficient to meet the FHA's proximate cause requirement. *Id.* at 13a-16a. It agreed with the City that the District Court had misread its decision in *Nasser*. *Id.* at 15a-16a. As to the other issues raised by the Bank or the District Court's opinion, the Eleventh Circuit remanded the case to allow the City to file an amended complaint. *Id.* at 17a. In doing so, the Eleventh Circuit noted that this Court had "handed down a decision that may materially affect the resolution of this case," *Id.* at 64a, namely, *Texas Department of Housing & Community Affairs v. Inclusive Communities Project, Inc.*, 135 S. Ct. 2507 (2015). Thus, the Eleventh Circuit instructed the District Court to review the amended complaint in light of this Court's decision in *Inclusive Communities*, which discussed pleading requirements for an FHA disparate-impact complaint. *Id.* at 65a.

This Petition was filed March 4, 2016. Since that filing, the District Court, on March 17, 2016, dismissed the City's Second Amended Complaint without prejudice. Order, *City of Miami v. Wells Fargo & Co.*, No. 13-24508 (S.D. Fla.), ECF No. 77. The City filed a Third Amended Complaint on April 29, 2016. Third Am. Compl., ECF No. 80. The Bank has a deadline to answer the new complaint or file a motion to dismiss by May 24 2016.

REASONS FOR DENYING THE PETITION

I. This Case Provides a Poor Vehicle for the Exercise of this Court's Discretion.

This case may be rendered moot if the District Court grants the Bank's expected motion to dismiss. That court has shown a disposition to grant such motions, having done so twice before, including once after the Eleventh Circuit reversed its decision. The possibility that a dismissal is in the offing underscores the wisdom of awaiting a final disposition. *See Virginia Military Inst. v. United States*, 508 U.S. 946, 946 (1993) ("We generally await final judgment in the lower courts before exercising our certiorari jurisdiction.") (Scalia, J.). *See also Brotherhood of Locomotive Firemen v. Bangor & Aroostock R.R. Co.*, 389 U.S. 327, 328 (1967) (holding the case "not yet ripe for review by this Court" because it was remanded to the District Court for further proceedings).

Nothing extraordinary is alleged to justify early review of the decision below, nor could it be alleged. *See Hamilton-Brown Shoe Co. v. Wolf Bros. & Co.*, 240 U.S. 251, 258 (1916) ("except in extraordinary cases, the writ is not issued until final decree" and the absence of finality "of itself" may be "sufficient ground for the denial of the application").

This case currently stands in an even weaker posture for consideration of certiorari than a dismissal motion stands for an ordinary appeal. Longstanding precedent holds that "denial of a motion to dismiss, even when the motion is based upon jurisdictional grounds, is not immediately reviewable." *Catlin v. United States*, 324 U.S. 229, 236 (1945). In the *Catlin* situation, the case goes on to its next phase. Here, the

City anticipates, much like Bank of America's motion filed May 16, that the Bank will argue three overlapping grounds for dismissal: an alleged failure to meet the statute of limitations, an alleged failure to identify a timely injury, and an alleged failure to meet this Court's requirements stated in *Inclusive Communities*. *See* Mot. to Dismiss, *City of Miami v. Bank of America*, No. 1:13-cv-24506, ECF No. 103.

In its decision below, the Eleventh Circuit instructed the District Court that:

> Any newly pled complaint must take into account the evolving law on disparate impact in the FHA context. Without the new pleadings before us, we have no occasion to pass judgment on how *Inclusive Communities* will impact this case, but we flag the issue both for the parties and for the district court on remand.

Pet. App. 65a.

The anticipated motion to dismiss will likely test whether the City has met that direction. Because this case is still being litigated at the motion to dismiss stage, and a ruling adverse to the City will provide a basis for a return to the Eleventh Circuit, there is no warrant to exercise the unusual discretion the Bank asks of this Court to review the Eleventh Circuit's earlier decision in this case and depart from the general practice of awaiting final judgment. Instead, the situation seems more akin to an appeal of the denial of a preliminary injunction, which is mooted by a district court's decision on the permanent injunction. *See Grupo Mexicano de Desarrollo, S.A. v.*

Alliance Bond Fund, Inc., 527 U.S. 308, 314 (1999) ("Generally, an appeal from the grant of a preliminary injunction becomes moot when the trial court enters a permanent injunction, because the former merges into the latter.").

II. The Absence of a Conflict in the Circuits Further Advises Against Review in this Court.

A. If a proper question, the issue presented is likely to be reviewed in other circuits.

The Bank does not assert that a conflict exists between the circuits on the issue of municipal standing to bring an FHA claim of this kind. Pet. 10-11. Instead, it speculates that there is "little chance" of diverse opinions being issued on the first Question Presented because of existing precedents. Pet. 11. Even as it denies that any circuit is likely to issue a decision conflicting with the decision of the Eleventh Circuit, it contradicts the claim by asserting that the "two sets of decisions [from this Court interpreting "aggrieved" in different statutes] cannot be reconciled" and that "this Court has already staked out both sides of the issue," forcing each circuit "to only pick which set of this Court's decisions to follow."[2] Pet. 10, 11. Rather than cause circuit stagnation, the examination of the supposedly conflicting precedents and the rationale for following one or the other

[2] The claim of two separate sets of precedents on the same issue ignores the fact that the precedents address two separate statutes, Title VII and the FHA. Each statute, however, has been treated consistently by this Court.

provides precisely the opportunity for percolation that this Court favors.

The first Question Presented is currently before the Ninth Circuit in a case in which the Bank is a party. In *City of Los Angeles v. Wells Fargo & Co.*, No. 15-56157 (9th Cir.), the District Court dismissed Los Angeles's FHA action against the Bank on summary judgment on statute-of-limitations and related grounds. *City of Los Angeles v. Wells Fargo & Co.*, No. 2:13-cv-9007, 2015 WL 4398858, at *14 (C.D. Cal. July 17, 2015). In response to the City's appeal, the Bank has asserted, *inter alia*, that the judgment in its favor may be affirmed because Los Angeles falls outside the FHA's zone of interests and therefore lacks standing to bring the action. Appellee Wells Fargo Br. at 49-56, *City of Los Angeles v. Wells Fargo & Co.*, No. 15-56157, 2016 WL 1003381 (9th Cir. Mar. 11, 2015). A second pending Ninth Circuit case also raises the same question. Los Angeles also brought a similar action against Bank of America, which was also dismissed at summary judgment on statute of limitations grounds. *City of Los Angeles v. Bank of America*, No. CV-13-9046, 2015 WL 4889511, at *6 (C.D. Cal. May 11, 2015). On appeal, Bank of America also asserts summary judgment may be affirmed on the alternative grounds that Los Angeles is outside the FHA's zone of interests. Appellee Bank of America Br. at 54-59, *City of Los Angeles v. Bank of America Corp.*, No. 15-5589, 2016 WL 281342 (9th Cir. Jan. 19, 2016).

The issue further appears likely to arise in the Seventh Circuit. The Northern District of Illinois has issued conflicting rulings that requires resolution by the Seventh Circuit, taking the polar opposite positions that the Bank speculates would never occur absent a decision by this Court. In *County of Cook v.*

Wells Fargo & Co., 115 F. Supp. 3d 909 (N.D. Ill. 2015), the county's lawsuit was dismissed as outside the zone of interests protected by the FHA because the county was not denied a home loan or offered unfavorable terms. *Id.* at 919. The court further stated, *id.* at 915-20, that, in *Thompson v. North American Stainless, LP*, 562 U.S. 170 (2011), this Court effectively overruled and made "kaput" *Gladstone, Realtors v. Village of Bellwood*, 441 U.S. 91 (1979), which had recognized municipal standing under the FHA for claims similar to those of the City in this case. The decision is at odds with the Bank's claim that no conflict can be possible. *Thompson* is relied upon by the Bank so heavily in its Petition that it earns a *passim* designation in its Table of Authorities.

Despite that ruling, two months later, another judge in the same court rejected that rationale. He specifically "decline[d] to adopt such a sweeping view of *Thompson*," and "[i]nstead, this Court agrees with another court in this district that found statutory standing under similar circumstances." *Cnty. of Cook v. HSBC N. Am. Holdings Inc.*, 136 F. Supp. 3d 952, 2015 WL 5768575, at *8 (N.D. Ill. Sept. 30, 2015) (citing *Cnty. of Cook v. Bank of Am. Corp.*, No. 14-C-2280, 2015 WL 1303313, at *4-5 (N.D. Ill. Mar. 19, 2015)) (examining *Thompson* and holding "the County's claims falls within the FHA's zone of interests"). With that conflict between district court decisions plainly joined, the Seventh Circuit is likely to weigh in on the first Question Presented.

Thus, this Court is likely to have the benefit of additional decisions from the Ninth and Seventh Circuits. Though the Bank denies that the issue will percolate, Pet. 11, it plainly will as at least two other

circuits appear likely to weigh in on the issue. If the first Question Presented is a proper one, it is one that would benefit from further ventilation based on additional exploration in appellate decisions.

B. The alleged conflict with this Court's recent jurisprudence does not exist.

The Bank's claim that this Court has adopted a new approach to the zone of interests analysis that needs preemptive application to the FHA through a grant of certiorari does not stand up to scrutiny. The argument is built on two recent precedents that reaffirmed preexisting law. As such, there is no warrant for this Court's intervention in the absence of a circuit conflict.

1. Lexmark *did not narrow this Court's approach to the zone of interests.*

First, the Bank asserts that the decision below is in tension with *Lexmark International, Inc. v. Static Control Components, Inc.*, 134 S. Ct. 1377 (2014). The contention is based on an erroneous assertion that *Lexmark* announced a new, more stringent application of the zone of interests. Pet. 18. In contrast, the Eleventh Circuit expressly held that the FHA's zone of interests "encompasses the City's allegations in this case . because the City has specifically alleged that its injury is the result of a Bank policy either expressly motivated by racial discrimination or resulting in a disparate impact on minorities." Pet. App. 47a.

Lexmark, applying the Lanham Act, stated that the zone-of-interests test applies to all statutorily

created causes of action, but that Congress may expand the zone of interests. 134 S. Ct. at 1388 ("a court . cannot limit a cause of action that Congress has created merely because 'prudence' dictates"). Indeed, in *Lexmark*, this Court held that a third-party whose trademark was not affected and who was not a direct competitor of the defendant but whose product was adversely affected by Lexmark's anticompetitive false advertising was within the Lanham Act's zone of interests. The breadth of zone-of-interest coverage in that statute, permitting a case of third-party liability, demonstrates that there is no inherent prudential limit that would require a city be the discriminated-against party to vindicate its own interests under the FHA.

The zone-of-interests test is not a new test and "is not meant to be especially demanding." *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, 132 S. Ct. 2199, 2210 (2012) (quoting *Clarke v. Securities Indus. Ass'n*, 479 U.S. 388, 399 (1987)). In fact, this Court has "always conspicuously included the word 'arguably' in the test to indicate that the benefit of any doubt goes to the plaintiff." *Id.* Thus, the "test forecloses suit only when a plaintiff's 'interests are so marginally related to or inconsistent with the purposes implicit in the statute that it cannot reasonably be assumed that Congress intended to permit the suit.'" *Id.* (quoting *Clarke*, 479 U.S. at 399).

To make the "zone" determination, a court applies Congress's "evident intent" and emphatically does "not require any 'indication of congressional purpose to benefit the would-be plaintiff.'" *Id.* (quoting *Clarke*, 479 U.S. at 399-400). Here, with respect to the FHA, congressional intent is very broad and plainly covers the City's action, as the FHA is "a

comprehensive open housing law." *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 413 (1968). Unlike other civil rights statutes, the FHA's "'potential for effectiveness is probably much greater than [§ 1982] because of the sanctions and the remedies that it provides.'" *Id.* at 416 n.19. Its purpose, as expressed by Congress, is "to provide, within constitutional limitations, for fair housing throughout the United States." 42 U.S.C. § 3601. This Court recently elaborated on that, holding that the FHA's "central purpose" is "to eradicate discriminatory practices within a sector of our Nation's economy." *Inclusive Communities*, 135 S. Ct. at 2521. Consistent with that broad purpose, the FHA provides for both private and governmental rights of action. *See* 42 U.S.C. §§ 3612-3614.

Lexmark acknowledges that "our analysis of certain statutes will show that they protect a more-than-usually 'expan[sive]' range of interests." *Lexmark*, 134 S. Ct. at 1388 (ellipses in original). That statement accords with the recognition in *Gladstone* that "Congress may. by legislation, expand standing to the full extent permitted by Art. III." *Gladstone*, 441 U.S. at 100. Thus, *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982), relying on *Gladstone*'s statement, held "courts accordingly lack the authority to create prudential barriers to standing in suits brought under [FHA Section 812]." *Id.* at 372. Nothing in *Lexmark* alters this conclusion.

2. Thompson *did not redefine standing under the FHA.*

The other precedent the Bank asserts limits the parties who may make a claim under the FHA and is in tension with the decision below is *Thompson*. However, *Thompson* was not an FHA case, does not

discuss discriminatory impact within the context of the FHA, and patently did not make any holding with respect to that statute. *See* 562 U.S. at 176 ("it is Title VII rather than Title VIII that is before us here").

Thompson reiterated previous holdings of this Court that a person need not have been the object of discriminatory practices to have standing. *Id.* at 177-78 (quoting *Clarke*, 479 U.S. at 399-400). *Thompson* also held that the term 'aggrieved' in Title VII covers "any plaintiff with an interest 'arguably [sought] to be protected' by the statutes." *Id.* at 178 (citation omitted). The only plaintiffs this Court held excluded were those "whose interests are unrelated to the statutory prohibitions in Title VII." *Id.* Although the Bank submits that Thompson reinterpreted who a person "aggrieved" is in a manner logically applicable to the FHA as well, *Thompson* expressly recognized that *Gladstone*, which upheld municipal standing to bring an FHA case over lost tax revenues, is "compatible with the 'zone of interests' limitation that we discuss" here.[3] 562 U.S. at 176.

If the narrowed approach of conveying standing only to direct victims of discrimination that the Bank asserts applies to Title VII and should apply to the

---

[3] *Gladstone* recognized that "[i]f [defendants'] steering practices significantly reduce the total number of buyers in the Bellwood housing market, prices may be deflected downward." 441 U.S. at 110. Then, with language applicable here, this Court authoritatively held that a "significant reduction in property values *directly* injures a municipality by diminishing its tax base, thus threatening its ability to bear the costs of local government and to provide services." *Id.* at 110-11 (emphasis added).

FHA were valid, *Thompson* would not have stated that "if that is what Congress intended, it would more naturally have said 'person claiming to have been discriminated against' rather than 'person claiming to be aggrieved.'" *Id.* at 177. This Court rejected this "artificially narrow" reading because it "contradicts the very holding of *Trafficante* [*v. Metro. Life Ins. Co.*, 409 U.S. 205 (1972)], which was that residents of an apartment complex were 'person[s] aggrieved' by discrimination against prospective tenants." *Id.*

Thompson clearly recognized that the zone of interests protected by Title VII is broad. *Id.* To satisfy it, plaintiffs interests just need to relate to the statutory prohibitions in Title VII. *Id.* That conclusion concerning Title VII, however, does not dictate a standard applicable to the FHA because the City's injuries flow from the Bank's racially discriminatory violations of the FHA and adversely affect the City's efforts to promote and seek to maintain a diverse, stable, and integrated community through various programs and numerous city agencies and departments, as the City has contended all along. App 1-a-6a.

While *Thompson* called some of *Trafficante's* dictum respecting Title VII "ill-considered," Pet. 10 (quoting *Thompson*, 562 U.S. at 176), the Bank eschews the care that this Court itself took in making the statement. The rejected *Trafficante* dictum concerned the scope of Title VII, not the FHA. *See id.* Nevertheless, *Thompson* found no error in the statement that FHA standing was as broad as Article III, specifically approving those statements as it appeared in *Gladstone*, 441 U.S. at 109, for its correct understanding of "the 'zone of interests' limitation" applicable to the FHA. 562 U.S. at 176. It further

emphasized that *Thompson* concerned "Title VII rather than Title VIII [FHA]," a wholly different statute. *Id.* *Thompson* does not require a reevaluation of FHA precedent by this Court, particularly in the complete absence of a circuit conflict.

3. The Bank's petition does little more than ask for correction of a claimed error.

Here, as the Eleventh Circuit held, the City's interests were well aligned with the statutory prohibitions found in the FHA. It specifically ruled that "to the extent a zone of interests analysis applies to the FHA, it encompasses the City's allegations in this case." Pet. App. 47a. Thus, the Bank's real complaint is not that the Eleventh Circuit failed to undertake the zone of interests analysis, but that it erred in its conclusion after reviewing the applicable precedent. In fact, the Bank calls the Eleventh Circuit's decision "plainly wrong." Pet. 12. However, this Court does not sit as a court of error to review and correct potentially erroneous rulings by lower courts.

After all, at least since the Judiciary Act of 1925, this Court has not sat as a court of last resort, concerned primarily with correcting errors and vindicating the rights of particular litigants, but instead resolves conflicts among the circuits and articulates legal rules and principles in cases with broad legal or social significance. *Cf. Stack v. Boyle*, 342 U.S. 1, 13 (1951) (Jackson, J., concurring) (certiorari granted for only general and important problems). There is no warrant to depart from that approach here. This Court has emphasized:

> A federal question raised by a petitioner may be "of substance" in the sense that, abstractly considered, it may present an intellectually interesting and solid problem. But this Court does not sit to satisfy a scholarly interest in such issues. Nor does it sit for the benefit of the particular litigants.

Rice v. Sioux City Mem'l Park Cemetery, 349 U.S. 70, 74 (1955) (internal citations omitted).

Rather, as Supreme Court Rule 10 makes clear, certiorari should rarely, if ever, be granted "when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." Thus, "'it is very important that we be consistent in not granting the writ of certiorari except in cases involving principles the settlement of which is of importance to the public, as distinguished from that of the parties.'" *Id.* at 79 (quoting *Layne & Bowler Corp. v. W. Well Works, Inc.*, 261 U.S. 387, 393 (1923)).

The Petition constitutes of little more than an attempt to appeal a claimed error and should be denied.

III. The Second Question Presented Seeks an Advisory Opinion.

Suggesting that it would promote efficiency, Pet. 16, the Bank asks this Court to determine whether the City is an aggrieved person for purposes of the FHA, as its second Question Presented. Even if this Court were to grant the first question, no purpose would be served in addressing the second. The record in the case before the Eleventh Circuit consisted of a complaint and briefing on the motion to dismiss. Since

then, the complaint has gone through two iterations, including new paragraphs that add further detail to the alignment of the City's interests with the purposes and thrust of the FHA. For example, absent from the original complaint but detailed in the second are the efforts of the City's Department of Community and Economic Development to operate the City's fair housing program, reduce illegal housing discrimination, monitor and investigate fair housing complaints, support fair housing litigation, and conduct research to identify and address fair housing impediments in order to improve the overall quality of life in the city. Third Am. Compl. at ¶ 20, *City of Miami v. Wells Fargo & Co.*, No. 1:13-cv-24508 (S.D. Fla. Apr. 29, 2016), ECF No. 80.

Any determination of whether the City has alleged a sufficiently cogent connection between the harms it has suffered and the purposes and authorizations of the FHA should not be determined on the basis of the original complaint, a pleading no longer operative in this case. Instead, such a determination of the adequacy of the original complaint's allegations to determine whether the City is aggrieved would constitute little more than an advisory opinion, as there is no present case or controversy regarding those allegations. Moreover, it is not the practice of this Court to examine the record developed subsequent to the appeal in the first instance. *See, e.g.*, *Boumediene v. Bush*, 553 U.S. 723, 772 (2008) (recognizing the "ordinary course" is to remand for consideration "in the first instance."). After all, "factfinding is the basic responsibility of district courts, rather than appellate courts," and appellate courts should not resolve "in the first instance this factual dispute which had not been

considered by the District Court." *DeMarco v. United States*, 415 U.S. 449, 450 (1974).

Even so, the Bank quotes and paraphrases the FHA to the effect that an "aggrieved person" is a "person who claims to have been (or believes he will be) injured by a 'discriminatory housing practice.'" Pet. 19 (quoting 42 U.S.C. § 3602(i)) (parenthetical in original). If the City's original pleading somehow did not meet that standard, which both the City and the Eleventh Circuit thought it did, Pet. App. 47a, the City's Third Amended Complaint adds more detail that should be considered, if the question remains unanswered. It provides the necessary connection between the City's injury and the FHA's language more explicitly than the original complaint, demonstrating that its government efforts to secure fair and equal housing are similar to that of the nonprofit corporation in *Havens*, which the Bank concedes "had an interest in nondiscrimination as an end in itself." Pet. 19. In *Havens*, the nonprofit alleged that it was "frustrated by defendants' racial steering practices in its efforts to assist equal access to housing through counseling and other referral services" and "had to devote significant resources to identify and counteract the defendant's [sic] racially discriminatory steering practices." 455 U.S. at 379. This Court held, if the allegation is true, the organization unquestionably suffered a "concrete and demonstrable injury to the organization's activities—with the consequent drain on the organization's resources" sufficient to confer standing under the FHA. *Id.*

Miami's allegations in its current pleading are no less within the embrace of the FHA. The Petition provides no basis for a review of allegations that have

not been reviewed by either the District Court nor the Eleventh Circuit and should be denied.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Date: May 20, 2016 Respectfully submitted,

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APPENDIX B: Plaintiff's Third Amended Complaint (filed Apr. 29, 2016), ECF No. 80, Excerpt 4a

APPENDIX A:

Plaintiff's Motion for Reconsideration, Exhibit A (Proffered First Amended Complaint) (filed July 21, 2014), ECF No. 50-1

Excerpt

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO: 13-cv-24508-DIMITROULEAS/SNOW

DEMAND FOR JURY TRIAL

CITY OF MIAMI, a Florida municipal corporation,
Plaintiff,

WELLS FARGO & CO., and WELLS FARGO BANK, N.A.,
Defendants.

FIRST AMENDED COMPLAINT FOR VIOLATIONS OF THE FEDERAL FAIR HOUSING ACT

* * *

1. It is axiomatic that banks should not make discriminatory loans. Banks must extend credit to minorities on equal terms as they do to other similarly situated borrowers. Banks should not target minority neighborhoods for loans that discriminate nor make loans to minorities on terms that are worse than those offered to whites with similar credit characteristics. When Banks engage

in such discriminatory conduct, it has profound non-economic and economic consequences for the cities in which mortgaged properties exist, and Banks should be responsible for those consequences. Wells Fargo's conduct has harmed the residents of Miami and impaired the City's strong, longstanding and active commitment to open, integrated residential housing patterns and its attendant benefits of creating a stable community that increases social and professional opportunities and the quality of life in the City. Additionally, Wells Fargo's conduct has caused the City to lose property tax revenues and required the City to pay the costs of repairing and maintaining properties that go into foreclosure due to discriminatory lending. This lawsuit arises because Wells Fargo breached these legally mandated obligations and foreseeably injured the City of Miami.

* * *

24. Plaintiff City of Miami is a Florida municipal corporation. The City has maintained an active and longstanding interest in the quality of life and the professional opportunities that attend an integrated community. One way that the City has furthered these interests is through its Department of Community and Economic Development, which is charged with responsibility for operating the City's fair housing program, reducing illegal housing discrimination, monitoring and investigating fair housing complaints, supporting fair housing litigation, and conducting research and studies to identify and address fair housing impediments as a means of improving the

overall quality of life in the city The City is authorized by the City Commission to institute suit to recover damages suffered by the City as described herein.

* * *

156. The Bank's predatory lending conduct frustrates the City's longstanding and active interest in promoting fair housing and securing the benefits of an integrated community, which is the purpose and mission of the Miami's Department of Community & Economic Development. The Department, which has responsibility for operating the City's fair housing program, is designed to "affirmatively further fair housing objectives of Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, as amended, and other relevant federal, state, and local housing laws." In discharging that responsibility, the Department "actively works to reduce illegal housing discrimination. The City promotes equal housing opportunity through education and training, monitoring and investigating fair housing complaints utilizing techniques to support fair housing litigation, and conducts research and studies to identify and address fair housing impediments."[1] The Bank's discriminatory lending practices directly interfere with the City's ability to achieve these important objectives.

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1 http://www.miamigov.com/communitydevelopment/pages/housing/FairHousing.asp.

APPENDIX B:

Plaintiff's Third Amended Complaint (filed Apr. 29, 2016), ECF No. 80

Excerpt

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO: 13-cv-24508-DIMITROULEAS

DEMAND FOR JURY TRIAL

CITY OF MIAMI, a Florida municipal corporation,
Plaintiff,

v.

WELLS FARGO & CO., and WELLS FARGO BANK, N.A.,
Defendants.

THIRD AMENDED COMPLAINT FOR VIOLATIONS OF THE FEDERAL FAIR HOUSING ACT

* * *

1. Plaintiff City of Miami ("Miami" or the "City") brings this action against Wells Fargo & Co., Inc. and Wells Fargo, N.A. (hereafter "Wells Fargo" or the "Bank") for the economic impact of its longstanding, unbroken policy and practice of both intentionally steering minority borrowers in Miami into "discriminatory" mortgage loans (defined herein as loans that have higher costs and risk

features than more favorable and less expensive loans issued to similarly situated white borrowers) and engaging in facially neutral business policies and practices that created an "artificial, arbitrary, and unnecessary" barrier to fair housing opportunities for minority home purchasers and owners. Additionally, Wells Fargo maintained a policy of refusing to extend credit to minority borrowers who desired to refinance the more expensive loans they previously received when such credit was extended to white borrowers.

* * *

20. Plaintiff City of Miami is a Florida municipal corporation. The City has maintained an active and longstanding interest in the quality of life and the professional opportunities that attend an integrated community. One way that the City has furthered these interests is through its Department of Community and Economic Development, which is charged with responsibility for operating the City's fair housing program, reducing illegal housing discrimination, monitoring and investigating fair housing complaints, supporting fair housing litigation, and conducting research and studies to identify and address fair housing impediments as a means of improving the overall quality of life in the city. The City is authorized by the City Commission to institute suit to recover damages suffered by the City as described herein.

* * *

98. The Bank's discriminatory lending practices have adversely affected the City's longstanding and active interest in promoting fair housing and securing the benefits of an integrated community, which is the purpose and mission of the Miami's Department of Community & Economic Development. The Department, which has responsibility for operating the City's fair housing program, is designed to "affirmatively further fair housing objectives of Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, as amended, and other relevant federal, state, and local housing laws." In discharging that responsibility, the Department "actively works to reduce illegal housing discrimination. The City promotes equal housing opportunity through education and training, monitoring and investigating fair housing complaints utilizing techniques to support fair housing litigation, and conducts research and studies to identify and address fair housing impediments."[2] The Bank's discriminatory lending practices directly interfere with the City's ability to achieve these important objectives.

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[2] City of Miami, Community & Economic Development Department, *Fair Housing*, http://www.miamigov.com/communitydevelopment/pages/housing/FairHousing.asp.

Supreme Court, U.S.
FILED
MAY 31 2016
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No. 15-1112

IN THE
Supreme Court of the United States

WELLS FARGO & CO.
and WELLS FARGO BANK, N.A.,
Petitioners,

v.

CITY OF MIAMI,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

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RULE 29.6 DISCLOSURE STATEMENT

The Rule 29.6 disclosure statement in the petition for a writ of certiorari remains accurate.

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IN THE

Supreme Court of the United States

No. 15-1112

WELLS FARGO & CO.
and WELLS FARGO BANK, N.A.,
Petitioners,

v.

CITY OF MIAMI,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

REPLY BRIEF IN SUPPORT OF CERTIORARI

INTRODUCTION

The first question in the petition presents a clean and simple issue for this Court to decide: whether the term "aggrieved" in the Fair Housing Act should be construed more narrowly than the outer boundaries of Article III. The City attempts to dissuade this Court from granting review, pointing to ongoing proceedings below and the need for further percolation. But the question presented is entirely unrelated to any further proceedings below; this Court routinely decides legal questions in an interlocutory posture; and any further percolation would be a waste of time, given the fundamental conflict in this

Court's own decisions on the meaning of the term "aggrieved."

The City also tries to discourage review of the second question presented—whether the City is an "aggrieved person" under the FHA. But all of the allegations that might bear on that question were already before the lower courts when they rendered their decisions below, making this an ideal vehicle for review. And in any event, nothing the City says about the second question should deter this Court from granting the first, which stands on its own as a fundamentally important question, deserving of this Court's review.

ARGUMENT

THIS COURT SHOULD GRANT REVIEW TO DECIDE BOTH QUESTIONS PRESENTED

A. This Case Is An Ideal Vehicle For Deciding Both Questions

1. The first question presented asks whether the term "aggrieved" in the FHA imposes a zone-of-interests requirement more stringent than the injury-in-fact requirement of Article III. The City contends that this case is a poor vehicle for deciding that question because there are ongoing proceedings in the District Court. Br. in Opp. 6-8. That contention fails.

First, there have not been, and will not be, any further proceedings on the meaning of the term "aggrieved." That issue was definitively resolved in the Eleventh Circuit's decision below, which held that "the term 'aggrieved person' in the FHA sweeps as broadly as allowed under Article III." Pet.

App. 16a. That holding is now the law of the circuit and the law of this case.

Second, the proceedings in the District Court involve entirely separate issues regarding, for instance, the FHA's statute of limitations and the viability of the City's disparate-impact theory. Br. in Opp. 7. Because those issues have no bearing on the meaning of the term "aggrieved," there would be no reason to await further proceedings before deciding the question here.

Third, the meaning of "aggrieved" is a threshold issue of "statutory standing," which goes to who may bring an FHA suit in the first place. Pet. App. 14a; *see* Pet. 15; Chamber of Commerce *Amicus* Br. 12. Threshold issues are supposed to be decided before other issues pertaining to the merits. And indeed, this Court's intervention could make further proceedings on the merits unnecessary, saving all involved a great deal of time and resources.

Fourth, there is no real danger that further proceedings below would moot this Court's review. Even if the District Court were to dismiss the City's latest complaint on grounds unrelated to the questions presented here, the City has given every indication that it would appeal that dismissal to the Eleventh Circuit. *See* Br. in Opp. 7 ("[A] ruling adverse to the City will provide a basis for a return to the Eleventh Circuit * * * ."). Thus, further proceedings below are unlikely to wrap up any time soon. Moreover, should certiorari be granted, Wells Fargo would ask the lower courts to stay proceedings pending this Court's review. The City fails to identify any reason a stay would not be granted.

Fifth, the City's analogies are completely inapt. The City observes that the "*denial* of a motion to dismiss * * * is not immediately reviewable" in the Court of Appeals. *Id.* at 6 (emphasis added) (internal quotation marks omitted). But the District Court in this case *granted* a motion to dismiss, Pet. App. 81a-82a, and that final judgment was reviewable in the Eleventh Circuit and is likewise reviewable here. The City also compares this "situation" to "an appeal of the denial of a preliminary injunction, which is mooted by a district court's decision on the permanent injunction." Br. in Opp. 7. But whereas preliminary and permanent injunctions involve overlapping issues, the meaning of the term "aggrieved" is, as explained above, entirely separate from any issue still being litigated in the District Court.

Sixth and finally, this Court routinely grants certiorari in cases like this one, to review the reversal of the dismissal of a complaint. *See, e.g.*, *Spokeo, Inc.* v. *Robins*, No. 13-1339, 2016 WL 2842447 (U.S. May 16, 2016); *Amgen Inc.* v. *Harris*, 136 S. Ct. 758 (2016) (per curiam); *OBB Personenverkehr AG* v. *Sachs*, 136 S. Ct. 390 (2015). For example, in *Lexmark International, Inc.* v. *Static Control Components, Inc.*, 134 S. Ct. 1377 (2014)—as in this case—the district court granted the petitioner's motion to dismiss on statutory standing grounds. *Id.* at 1385. The court of appeals reversed, just as it did here. *Id.* And when the petitioner sought certiorari, the respondent argued, as the City argues here, that "the case is a poor vehicle because the decision is interlocutory." Br. in Opp. 7, *Lexmark*, 134 S. Ct. 1377 (No. 12-873), 2013 WL 1868360. The Court nevertheless granted certiorari and held that a cause of action under the statute was *not* "available to anyone who can satisfy

the minimum requirements of Article III." *Lexmark*, 134 S. Ct. at 1388. That is precisely what this Court should do here. And for all of these reasons, the interlocutory posture of this case should not stand in the way.

2. As for the second question presented—*i.e.*, whether the City is an "aggrieved person" under the FHA—the City argues that this Court's decision would "constitute little more than an advisory opinion" because the City amended its complaint following the Eleventh Circuit's decision. Br. in Opp. 18. But the fact that the City has amended its complaint is no reason to deny review.

To begin, the amendments at issue were already before the lower courts when they rendered their decisions below. When the City moved for reconsideration of the District Court's dismissal of the City's original complaint, the City attached a proposed amended complaint including "further detail" about "the efforts of the City's Department of Community and Economic Development to operate the City's fair housing program, reduce illegal housing discrimination," and so on. *Id.*; *see* Br. in Opp. App. 3a. Those proposed amendments were virtually identical to the allegations that appear in the City's latest complaint. *Compare* Br. in Opp. App. 1a-3a (the City's proposed amended complaint attached to its motion for reconsideration), *with id.* at 4a-6a (the City's latest complaint). The District Court denied reconsideration, holding that the City's proposed amendments "f[ell] far short of alleging facts sufficient to demonstrate that Defendants' lending practices adversely affected the racial diversity or integration of the City." Pet. App. 79a n.1; *see id.* at 72a-73a. Thus, contrary to the City's assertion, Br. in Opp. 19-20, its additional

allegations *have been* reviewed—and still found insufficient by the District Court. Because those proposed amendments were part of the record below, they would also be part of the record before this Court, making this an ideal vehicle for review.

Further, a decision rendered based on the record in front of the Eleventh Circuit can hardly be described as "advisory." As noted, the question whether the City falls within the FHA's zone of interests has already been conclusively decided by the Eleventh Circuit. Pet. App. 14a-16a. Absent this Court's intervention, the decision below will be the Eleventh Circuit's last—and only—word on the issue, no matter how many times the City amends its complaint. It is therefore appropriate for this Court to review that decision in light of the record that was before the Eleventh Circuit.

In any event, this Court could always decide that the FHA's zone of interests is narrower than Article III—and that the zone does not encompass merely economic injuries—and then remand for the lower courts to apply those legal principles to the City's amended allegations in the first instance. Thus, whether this Court considers the City's amendments or not, there is no obstacle to this Court's review.

B. The Questions Are Worthy Of This Court's Review

The City contends that the questions presented are unworthy of this Court's review for two reasons: first, because the meaning of the term "aggrieved" would "benefit from further ventilation" in the lower courts, Br. in Opp. 11; and second, because the petition complains only of "the misapplication of a properly

stated rule of law." *Id.* at 17 (internal quotation marks omitted). Neither contention is true.

1. As explained in the petition, additional percolation would serve little purpose. Pet. 11. The conflict over the meaning of "aggrieved" lies in this Court's own decisions. *Thompson* v. *North American Stainless, LP*, 562 U.S. 170 (2011), holds that the term "aggrieved" should be construed more narrowly than Article III, and *Lexmark* confirms the same. Pet. 9-10. By contrast, the Court stated in a trio of older cases beginning with *Trafficante* v. *Metropolitan Life Insurance Co.*, 409 U.S. 205 (1972), that statutory standing under the FHA extends to the outer bounds of Article III. Pet. 8-9.

Given these two conflicting lines of decisions, "additional percolation would not serve any significant law-development function." Chamber of Commerce *Amicus* Br. 4. To be sure, lower courts might wrestle with "what is the binding Supreme Court precedent." *Id.* But that is not the question that this Court must ultimately decide. The issue for this Court is not which of its opinions a lower court should treat as binding. Rather, the issue is what is the best interpretation of the term "aggrieved." And because this Court's opinions have already staked out both sides of that issue, further percolation would result only in lower courts choosing which side to follow—an exercise that would do nothing to help this Court reach a "better informed" decision on the underlying merits of what "aggrieved" means. *Arizona* v. *Evans*, 514 U.S. 1, 23 n.1 (1995) (Ginsburg, J., dissenting).

The lower-court decisions that the City cites simply prove the point. The City points, for example, to a district court's nonfinal decision from the Northern

District of Illinois holding that "aggrieved" under the FHA is narrower than Article III. *See* Br. in Opp. 9-10 (discussing *County of Cook* v. *Wells Fargo & Co.*, 115 F. Supp. 3d 909 (N.D. Ill. 2015)). But that decision did not rest on any fresh analysis of the statutory text. Rather, it rested on the court's view that it was bound by *Thompson*, rather than by this Court's older FHA cases. *See County of Cook*, 115 F. Supp. 3d at 916-918. The district court's focus on which of those opinions were binding only confirms that additional percolation in the lower courts is not going to be helpful to this Court. Like the decision below, the district court did not "meaningfully engage with any of the relevant issues," and instead held simply that it was bound by one set of decisions over another. Chamber of Commerce *Amicus* Br. 15. Only this Court can move beyond the conflict in its own opinions and decide which side is right as a matter of statutory interpretation.

And the costs of delaying review are significant. As *amici* explain, the decision below "threatens to turn a wave of litigation into a torrent," as plaintiffs seek to take advantage of the Eleventh Circuit's "open-ended approach to standing under the FHA." Am. Bankers Ass'n *Amicus* Br. 9. The costs of such "extensive and unpredictable liability" will be borne by financial institutions and, ultimately, residential lending markets. Chamber of Commerce *Amicus* Br. 5; *see also id.* at 16. Thus, rather than permit percolation simply for percolation's sake, this Court should intervene now and decide who may sue under the FHA.

2. The City also attempts to portray the petition as seeking only fact-bound error correction. It quotes half of a sentence from the decision below, stating

that, "to the extent a zone of interests analysis applies to the FHA, it encompasses the City's allegations in this case." Br. in Opp. 16 (quoting Pet. App. 47a). And based on that partial quotation, the City represents the Eleventh Circuit as holding that "the City's interests were well aligned with the statutory prohibitions found in the FHA." *Id.*

The Eleventh Circuit held nothing of the sort. The Eleventh Circuit never addressed whether the City's interests were "well aligned with the statutory prohibitions found in the FHA" because—in the part of the sentence above that the City leaves out—the Eleventh Circuit held that "the term 'aggrieved person' in the FHA sweeps as broadly as allowed under Article III." Pet. App. 47a. It is that legal standard—not the mere application of it—that the first question presented challenges, asking whether the FHA actually imposes a standard "more stringent" than Article III. Pet. i. And that simple and straightforward legal question, on which this Court's own decisions are in fundamental conflict, warrants this Court's immediate review.

C. The Decision Below Is Plainly Wrong

On the merits, the City has precious little to say. With respect to the first question presented, the City's only attempt to square the decision below with *Thompson* is to say that *Thompson* was a Title VII case, "not an FHA case." Br. in Opp. 13. That is certainly true, but *Thompson* involved the same term "aggrieved," and saw "no reason why" that term should have a different meaning in the FHA. 562 U.S. at 177. As a matter of statutory interpretation, therefore, the FHA—like Title VII—should be construed to impose a zone-of-interests requirement

more stringent than Article III. *See* Pet. 13. Not even the Eleventh Circuit disputed this logic, acknowledging that *Thompson*'s "interpretation of Title VII may signal that the Supreme Court is prepared to narrow its interpretation of the FHA in the future." Pet. App. 45a.

As for the second question presented, the City does not seem to dispute that if the FHA should be construed more narrowly than Article III, then a plaintiff who alleges injury to only *economic* interests would fall outside the zone protected by the FHA. Instead, the City now maintains that Wells Fargo's alleged conduct has injured the City's *non*-economic "interest in promoting fair housing and securing the benefits of an integrated community." Br. in Opp. App. 3a, 6a; *see also* Br. in Opp. 19. But as the District Court concluded, the City has failed to explain how Wells Fargo's alleged conduct in fact affected "the racial diversity or integration of the City." Pet. App. 79a n.1. And the City has further failed to explain how that supposed effect on "racial diversity or integration" bears any relationship to its request for compensatory damages. *Id.* Because the City has not plausibly alleged that it is an "aggrieved person" under the FHA, it has no right to sue to enforce the statute, and the Eleventh Circuit's contrary decision should be reversed.

CONCLUSION

For the foregoing reasons and those in the petition, the petition should be granted.

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IN THE
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WELLS FARGO & CO.
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QUESTIONS PRESENTED

1. Whether the term "aggrieved" in the Fair Housing Act imposes a zone-of-interests requirement more stringent than the injury-in-fact requirement of Article III, and whether the City falls within the zone of interests.

2. Whether the directness or remoteness of a plaintiff's injury is relevant to the Fair Housing Act's proximate-cause requirement, and whether the City has pleaded an injury proximately caused by a Fair Housing Act violation.

PARTIES TO THE PROCEEDING

Wells Fargo & Co. and Wells Fargo Bank, N.A., petitioners here, were defendants-appellees in the Court of Appeals.

The City of Miami, respondent here, was plaintiff-appellant in the Court of Appeals.

RULE 29.6 DISCLOSURE STATEMENT

Wells Fargo & Co. has no parent corporation. Berkshire Hathaway Inc. is a publicly held company that owns 10% or more of Wells Fargo & Co.'s stock. With the exception of Berkshire Hathaway Inc., no other publicly held company owns 10% or more of Wells Fargo & Co.'s stock.

Wells Fargo Bank, N.A.'s parent corporation is Wells Fargo & Co., and Wells Fargo & Co. is a publicly held company that owns 10% or more of Wells Fargo Bank, N.A.'s stock. With the exception of Wells Fargo & Co., no other publicly held company owns 10% or more of Wells Fargo Bank, N.A.'s stock.

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IN THE

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v.

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Respondent.

On Writ of Certiorari to the
United States Court of Appeals
for the Eleventh Circuit

BRIEF FOR PETITIONERS

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eleventh Circuit is reported at 801 F.3d 1258. Pet. App. 1a-19a. The orders of the District Court granting petitioners' motion to dismiss and denying reconsideration are unreported. *Id.* at 72a-73a, 81a-82a.

JURISDICTION

The Eleventh Circuit entered judgment on September 1, 2015, Pet. App. 1a, and denied a timely petition for panel rehearing on November 5, 2015, *id.* at 100a. On January 25, 2016, Justice Thomas extended the time within which to file a petition for a

writ of certiorari to and including March 4, 2016, and the petition was filed on that date. On June 28, 2016, this Court granted the petition and consolidated this case with No. 15-1111, *Bank of America Corp.* v. *City of Miami*. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The pertinent provisions of the Fair Housing Act (FHA) are reprinted in an addendum to this brief. Add. 1a-7a.

STATEMENT

A. The Fair Housing Act

One of our Nation's most important statutes, Title VIII of the Civil Rights Act of 1968, Pub. L. No. 90-284, 82 Stat. 81—commonly known as the Fair Housing Act—prohibits discrimination in housing. For example, § 804(b) of the FHA prohibits discrimination in the "terms, conditions, or privileges of sale or rental of a dwelling." 42 U.S.C. § 3604(b). And § 805(a) prohibits discrimination in "residential real estate-related transactions," including the "making or purchasing of loans * * * secured by residential real estate." *Id.* § 3605(a), (b)(1). The types of discrimination covered include discrimination on the basis of race, color, religion, sex, and national origin. *Id.* §§ 3604(b), 3605(a).

Section 813 of the FHA authorizes an "aggrieved person" to sue to enforce these provisions in federal court. *Id.* § 3613(a)(1)(A). Section 802—the statute's definitions section—defines an "[a]ggrieved person" to include "any person" who "claims to have been injured by a discriminatory housing practice" or "believes that such person will be injured by a dis-

criminatory housing practice that is about to occur." *Id.* § 3602(i). A "[d]iscriminatory housing practice" means "an act that is unlawful" under the statute. *Id.* § 3602(f).

The FHA also provides for enforcement by the Federal Government. Under § 810, an "aggrieved person," or the Secretary of Housing and Urban Development on behalf of such person, may file an administrative "complaint." *Id.* § 3610(a)(1)(A)(i). If the Secretary determines that there is "reasonable cause * * * to believe that a discriminatory housing practice has occurred or is about to occur," the Secretary shall issue a "charge on behalf of the aggrieved person." *Id.* § 3610(g)(2)(A). The "aggrieved person" or the respondent may then elect to have the charge resolved either in a civil action or by an administrative law judge. *Id.* § 3612(a). If either party elects the former, "the Attorney General shall commence and maintain[] a civil action on behalf of the aggrieved person" in federal court. *Id.* § 3612(o)(1). The Attorney General may also file a civil action whenever she has "reasonable cause to believe" that there is a "pattern or practice of resistance to the full enjoyment" of rights under the FHA. *Id.* § 3614(a).

B. The City's Complaint

In 2013, the City of Miami, Florida, sued Wells Fargo & Co. and Wells Fargo Bank, N.A. (together, Wells Fargo) under § 813, alleging violations of §§ 804(b) and 805(a) of the FHA. J.A. 344 (Compl. ¶ 185). The complaint accused Wells Fargo of engaging in discriminatory lending practices, which allegedly included targeting African-Americans and Latinos for predatory loans and refusing to extend them credit on equal terms. J.A. 269 (Compl. ¶ 6).

For example, the City alleges that minorities were "much more likely to receive subprime loans and loans with features that are associated with higher foreclosures," like "prepayment penalties." J.A. 304-305 (Compl. ¶ 81). According to the City, Wells Fargo's alleged practices violated the FHA because they were intentionally discriminatory and had a disparate impact on minorities and "predominantly" minority neighborhoods. J.A. 343-344 (Compl. ¶¶ 183-184).[1]

The City claimed that it had suffered two "financial injuries" as a result of Wells Fargo's alleged conduct. J.A. 334 (Compl. ¶ 153). The first was a reduction in property tax revenues. According to the City, the alleged conduct led to more foreclosures, which led to lower property values, which led to less tax revenue. J.A. 335-338 (Compl. ¶¶ 156-170). The second injury the City allegedly suffered was having to increase municipal spending. The City alleged that the foreclosures led to "a variety of problems, including increased vagrancy, criminal activity, and threats to public health and safety"—which, in turn, required greater spending on municipal services. J.A. 339 (Compl. ¶ 172). The complaint thus sought damages for "lost tax revenues and the need to provide increased municipal services." J.A. 345 (Compl. ¶ 189). It also sought an injunction prohibiting Wells Fargo from engaging in these alleged practices in the future. J.A. 347

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[1]Wells Fargo vigorously disputes that it engaged in any discrimination in violation of the FHA. The issue of whether it did or not, however, is not before this Court. For purposes of this brief, Wells Fargo accepts as true the non-conclusory factual allegations in the complaint.

C. The District Court's Decisions

The District Court dismissed the complaint. Pet. App. 81a-82a. In the court's view, the City had to satisfy "the zone of interests and proximate causation requirements" to have statutory "standing" to sue. *Id.* at 88a. With respect to the former, the court explained that the FHA prohibits discrimination because of race, but that the City had not alleged any injury "affected by a racial interest." *Id.* at 92a (internal quotation marks omitted).[2] Instead, the court found, the City had alleged "merely economic injuries." *Id.* The court thus concluded that the City fell beyond the zone of interests protected by the FHA. *Id.* at 93a.

The District Court also held that the City had not adequately alleged that its injuries were proximately caused by Wells Fargo's alleged conduct. *Id.* at 93a-95a. "Against the backdrop of a historic drop in home prices and a global recession," the court explained, "the decisions and actions of third parties, such as loan services, government entities, competing sellers, and uninterested buyers, thwart the City's ability to trace a foreclosure to Defendants' activity." *Id.* at 94a. Moreover, even if the City could establish that link, it could not "demonstrat[e] that the foreclosures caused the City to be harmed." *Id.*

The City moved for reconsideration, and attached a proposed first amended complaint to its motion. In its proposed amendments, the City asserted "inter-

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[2]The District Court's orders in this case incorporate its orders in the City's suit against Bank of America. Pet. App. 72a, 81a; *see id.* at 74a-80a, 83a-99a.

est[s] in promoting fair housing and securing the benefits of an integrated community." J.A. 416-417 (Proposed First Am. Compl. ¶ 156). The court denied reconsideration, concluding that the City's proposed amendments were futile. Pet. App. 79a n.1. The court explained that "sprinkling in allegations that the City has a generalized interest in racial integration falls far short of alleging facts sufficient to demonstrate that Defendants' lending practices adversely affected the racial diversity or integration of the City." *Id.* Moreover, the court observed, the City's "generalized allegations" did not "appear to be connected in any meaningful way to the purported loss of tax revenue and increase in municipal expenses allegedly caused by Defendants' lending practices." *Id.*

D. The Eleventh Circuit's Decision

The Eleventh Circuit reversed.[3] The court began by considering three "[o]lder Supreme Court cases": *Trafficante* v. *Metropolitan Life Insurance Co.*, 409 U.S. 205 (1972); *Gladstone, Realtors* v. *Village of Bellwood*, 441 U.S. 91 (1979); and *Havens Realty Corp.* v *Coleman*, 455 U.S. 363 (1982). Pet. App. 39a-41a. The Eleventh Circuit read those cases to stand for the proposition that "'[statutory] standing under [the FHA] extends "as broadly as is permitted by Article III of the Constitution."'" *Id.* at 44a (quoting *Gladstone*, 441 U.S. at 98). The Eleventh Circuit then turned to two "recent Supreme Court cases," *id.* at 42a, both decided unanimously: *Thomp-*

[3]The Eleventh Circuit's opinion in this case incorporates its opinion in the City's suit against Bank of America. Pet. App. 12a; *see id.* at 20a-71a.

son v. *North American Stainless, LP*, 562 U.S. 170 (2011), and *Lexmark International, Inc.* v. *Static Control Components, Inc.*, 134 S. Ct. 1377 (2014). The Eleventh Circuit acknowledged that *Thompson* and *Lexmark* "cast some doubt on the broad interpretation of FHA statutory standing in *Trafficante*, *Gladstone*, and *Havens*." Pet. App. 42a. Indeed, the court observed, "the *Thompson* Court's interpretation of Title VII may signal that the Supreme Court is prepared to narrow its interpretation of the FHA in the future." *Id.* at 45a; *see id.* at 15a. Nevertheless, the Eleventh Circuit felt bound by *Trafficante*, *Gladstone*, and *Havens* to conclude that "the term 'aggrieved person' in the FHA sweeps as broadly as allowed under Article III." *Id.* at 16a, 47a. And according to the court, the City had "said enough to establish Article III standing." *Id.* at 37a; *see id.* at 13a-14a.

The Eleventh Circuit also held that the City had said enough to satisfy the proximate-cause requirement. The court agreed that the statute imposed such a requirement. *Id.* at 50a n.8. But it rejected the notion that proximate cause required allegations that the "Bank's actions *directly* harmed the City." *Id.* at 52a (emphasis added). Instead, the court held, "the proper standard * * * is based on foreseeability." *Id.* at 55a. And under that standard, the court concluded that the City's allegations were sufficient: "Although there are several links in th[e] causal chain, none are unforeseeable." *Id.* at 56a; *see id.* at 16a.

The Eleventh Circuit denied rehearing, and this Court granted certiorari.

SUMMARY OF ARGUMENT

The question in this case is not whether the City has adequately pleaded violations of the Fair Housing Act. Rather, the question is whether the City is an appropriate party to seek relief for the violations it asserts.

The FHA authorizes "aggrieved person[s]" to sue. 42 U.S.C. § 3613(a)(1)(A). To be an "aggrieved person," it is not enough to plead the bare minimum to satisfy Article III standing. Rather, a plaintiff has a right to sue only if she (1) falls within the zone of interests protected by the statute, and (2) claims an injury proximately caused by the asserted statutory violation. *See Lexmark Int'l, Inc.* v. *Static Control Components, Inc.*, 134 S. Ct. 1377, 1388-1391 (2014). The City's complaint fails on both fronts.

I. The FHA imposes a zone-of-interests limitation, and the City falls outside of it. In a unanimous decision five years ago, this Court held that the term "aggrieved" under Title VII does more than reiterate Article III's requirement of an injury in fact. *See Thompson* v. *N. Am. Stainless, LP*, 562 U.S. 170, 175-178 (2011). Instead, it enables suit by a "plaintiff with an interest arguably sought to be protected by the statute, while excluding plaintiffs * * * whose interests are unrelated to the statutory prohibitions in Title VII." *Id.* at 178 (internal quotation marks, brackets, and citation omitted). There is no ground for interpreting the FHA differently than Title VII. The two statutes contain the same text, were enacted against the same presumption that the zone-of-interests limitation applies, and would permit the same absurd consequences if read to allow anyone with Article III standing to sue.

The Eleventh Circuit held to the contrary because it believed it was bound by dicta in three Supreme Court opinions from over three decades ago. In each of those opinions, the Court mentioned that the term "aggrieved" extends as far as Article III permits. *See Trafficante* v. *Metro. Life Ins. Co.*, 409 U.S. 205, 209 (1972); *Gladstone, Realtors* v. *Village of Bellwood*, 441 U.S. 91, 109 (1979); *Havens Realty Corp.* v. *Coleman*, 455 U.S. 363, 372 (1982). But in each case, the statement was unnecessary to the ultimate holding, because the plaintiffs had claimed injuries that fell comfortably within the FHA's zone of interests. For that reason, this Court has already unanimously dismissed the stray language in those three cases as "dictum"—and "ill-considered" dictum at that. *Thompson*, 562 U.S. at 176.

Under an appropriate zone-of-interests test, the City's complaint fails. Its purported injuries bear no relation to the interests that the FHA protects. As this Court recently explained, "the FHA's central purpose" is to "eradicate discriminatory practices" in the housing sector. *Tex. Dep't of Hous. & Cmty. Affairs* v *Inclusive Cmtys. Project, Inc.*, 135 S. Ct. 2507, 2521 (2015). That is the purpose of the statutory provisions that form the basis of the City's claims here. And yet, the City has not asserted *any* injury to an interest in non-discrimination. To the contrary, it has pleaded only "financial injuries," claiming a reduction in property tax revenue and an increase in the demand for costly municipal services. J.A. 334-341 (Compl. ¶¶ 153, 156-179). Those financial injuries depend solely on the City's claim that there was an increase in foreclosures within city limits; they do *not* depend on the discriminatory nature of Wells Fargo's alleged conduct. Indeed,

they are indifferent to whether those foreclosures were the result of discrimination at all. Unlike the plaintiffs in *Trafficante*, *Gladstone*, and *Havens*, then, the City does not seek to vindicate the interest in non-discrimination that the FHA protects. For that reason alone, the City's complaint should be dismissed.

II. The complaint fails for another independent reason: Wells Fargo's actions did not proximately cause the injuries the City pleads.

The FHA grants a private right of action to those persons who "have been injured by" or "will be injured by" certain discriminatory housing practices. 42 U.S.C. §§ 3602(i), 3613. Although the statute does not further discuss causation, this Court "generally presume[s] that a statutory cause of action is limited to plaintiffs whose injuries are proximately caused by violations of the statute," unless Congress states otherwise. *Lexmark*, 134 S. Ct. at 1390. Congress did not state otherwise in the FHA.

Proximate cause demands "a sufficiently close connection" between "the harm alleged" and "the conduct the statute prohibits." *Id.* It thus precludes recovery for at least two classes of harms: (1) those harms that are merely *fortuitous*, and (2) those harms that are too *remote* from the statutory violation. Here, the Eleventh Circuit mistakenly reduced proximate cause to a narrow "foreseeability" test and refused to consider the remoteness of the City's claims. Yet this Court has repeatedly assessed the directness or remoteness of statutory injuries, and lifting that restriction in the FHA context would throw open the door to an infinite sequence of possible plaintiffs.

Under well-established proximate-cause principles, by contrast, the City's claims are too remote to survive. The City is not among those immediately harmed by the alleged discrimination. In fact, its claimed injuries are *several steps* removed from any such discrimination—and, indeed, are agnostic as to whether discrimination occurred in the first place. In that sense, the City is no different from the innumerable other individuals and entities that suffered economic losses after the collapse of the American housing market. It cannot use the FHA to seek recovery for a financial injury that was not proximately caused by allegedly discriminatory lending practices.

Because the City cannot plead an injury within the FHA's zone of interests and, alternatively, cannot plead an injury that was proximately caused by any FHA violation, the judgment of the Eleventh Circuit should be reversed.

ARGUMENT

I. THE CITY HAS NO CAUSE OF ACTION BECAUSE ITS ALLEGED INJURIES FALL OUTSIDE THE FHA'S ZONE OF INTERESTS

"Congress is presumed to legislate against the background of the zone-of-interests limitation, which applies unless it is expressly negated." *Lexmark*, 134 S. Ct. at 1388 (internal quotation marks and brackets omitted). That limitation narrows the types of injuries that can be the basis for a suit to those which fall within the zone of interests protected by the statute.

Congress incorporated a zone-of-interests limitation into the FHA when it created a cause of action only for "aggrieved" persons. 42 U.S.C.

§ 3613(a)(1)(A). Because the City's asserted injuries in this case fall well beyond that zone, the City lacks a cause of action under the FHA.

A. The FHA Imposes A Zone-Of-Interests Requirement More Stringent Than The Injury-In-Fact Requirement Of Article III

1. This Court's unanimous opinion in *Thompson* all but decides this case. There, the Court addressed the issue of who could sue under Title VII, another antidiscrimination statute with the same relevant text. Congress enacted Title VII in 1964, four years before it enacted the FHA. Civil Rights Act of 1964, Pub. L. No. 88-352, tit. VII, 78 Stat. 241, 253-266. And in Title VII, Congress authorized suit to enforce the statute by "person[s] claiming to be aggrieved," using the same term—"aggrieved"—that it would later use in the FHA. *Id.*, tit. VII, § 706(e), 78 Stat. at 260 (current version at 42 U.S.C. § 2000e-5(f)(1)).

In an 8-to-0 opinion, the Court in *Thompson* rejected two "extreme," yet different, interpretations of "aggrieved." 562 U.S. at 177. At one extreme was the view that Congress intended the term to encompass only those who are themselves discriminated against. *See id.* The Court saw "no basis in text or prior practice" for that overly narrow view, explaining that "if that is what Congress intended it would more naturally have said 'person claiming to have been discriminated against' rather than 'person claiming to be aggrieved.'" *Id.* "Moreover," the Court continued, "such a reading contradicts the very holding of *Trafficante*," *id.*, a case involving "the 'person aggrieved' provision" of the FHA. *Id.* at 176. *Trafficante* held "that residents of an apartment complex were 'person[s] aggrieved'" under the FHA,

even though the ones discriminated against were prospective tenants, not the residents themselves. *Id.* at 177; *see Trafficante*, 409 U.S. at 209. The Court concluded: "We see no reason why the same phrase in Title VII should be given a narrower meaning." *Thompson*, 562 U.S. at 177.

At the other extreme was the view that "the aggrievement referred to is nothing more than the minimal Article III standing." *Id.* at 175. The Court acknowledged that in *Trafficante*, it had "suggested in dictum that the Title VII aggrievement requirement conferred a right to sue on all who satisfied Article III standing." *Id.* at 176 (citing *Trafficante*, 409 U.S. at 209). But the Court in *Thompson* rejected that "dictum" as "too expansive." *Id.* "Indeed," the Court reasoned, not even the *Trafficante* opinion "adhere[d] to it in expressing its [FHA] holding that residents of an apartment complex could sue the owner for his racial discrimination against prospective tenants." *Id.* (citing *Trafficante*, 409 U.S. at 209). And though "[l]ater opinions," such as *Gladstone*, "reiterate that the term 'aggrieved' in [the FHA] reaches as far as Article III permits," the Court observed that "the holdings of those cases are compatible with" a narrower, "'zone of interests' limitation." *Id.*

Dismissing the "*Trafficante* dictum" as "ill-considered," the Court "decline[d] to follow it." *Id.* "If any person injured in the Article III sense by a Title VII violation could sue," the Court explained, "absurd consequences would follow." *Id.* at 176-177 "For example," the Court reasoned, "a shareholder would be able to sue a company for firing a valuable employee for racially discriminatory reasons, so long as he could show that the value of his stock de-

creased as a consequence." *Id.* at 177 The Court thus concluded that "the term 'aggrieved' must be construed more narrowly than the outer boundaries of Article III." *Id.*

Having rejected both extremes, the Court explained that "there is a common usage of the term 'person aggrieved' that avoids * * * equating it with Article III and yet is fully consistent with [the Court's] application of the term in *Trafficante*." *Id.* Indeed, similar language in the Administrative Procedure Act (APA) has long been construed to mean that "a plaintiff may not sue unless he falls within the 'zone of interests' sought to be protected by the statutory provision whose violation forms the legal basis for his complaint." *Id.* (internal quotation marks omitted). The Court held that "the term 'aggrieved' in Title VII incorporates" that zone-of-interests test, "enabling suit by any plaintiff with an interest arguably sought to be protected by the statute, while excluding plaintiffs who might technically be injured in an Article III sense but whose interests are unrelated to the statutory prohibitions in Title VII." *Id.* at 178 (internal quotation marks, brackets, and citation omitted).

2. There are no grounds for interpreting the FHA differently than Title VII. The FHA contains the same text. The FHA was enacted against the same background presumption of congressional intent. And allowing anyone with an Article III injury to sue under the FHA would lead to the same absurd consequences. Such an "extrem[e]" interpretation of "aggrieved" would be just as "ill-considered" as it is under Title VII. *Id.* at 176, 177.

a. *Same statutory text.* Both the FHA and Title VII use the same statutory term—"aggrieved"—in dealing with the same subject matter—discrimination. *See Inclusive Cmtys.*, 135 S. Ct. at 2521 (observing that both the FHA and Title VII share the same goal of "eradicat[ing] discriminatory practices within a sector of our Nation's economy"). And it is black-letter law that "when Congress uses the same language in two statutes having similar purposes, * * * it is appropriate to presume that Congress intended that text to have the same meaning in both statutes." *Smith* v. *City of Jackson*, 544 U.S. 228, 233 (2005) (plurality opinion); *see also Northcross* v. *Bd. of Educ. of Memphis City Schs.*, 412 U.S. 427, 428 (1973) (per curiam) ("The similarity of language in [the two statutes] is, of course, a strong indication that the two statutes should be interpreted *pari passu*."); Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 252 (2012) ("Statutes *in pari materia* are to be interpreted together, as though they were one law.").

This Court has consistently applied this principle in cases involving the FHA and Title VII. For example, in a case involving the FHA just two Terms ago, the Court looked to "cases interpreting Title VII" for "essential background and instruction." *Inclusive Cmtys.*, 135 S. Ct. at 2518. The Court then relied on textual similarities between the two statutes in concluding that both provide for disparate-impact claims. *Id.* at 2519; *see also Buckhannon Bd. & Care Home, Inc.* v. *W. Va. Dep't of Health & Human Res.*, 532 U.S. 598, 603 n.4 (2001) (interpreting the two statutes' fee-shifting provisions "consistently"). Even more relevant here, the Court has applied this principle to the very term at issue—"aggrieved." In

considering the meaning of "aggrieved" in the FHA, the Court in *Trafficante* "relied upon, and cited with approval, a Third Circuit opinion involving Title VII." *Thompson*, 562 U.S. at 176 (citing *Trafficante*, 409 U.S. at 209). And in considering the meaning of "aggrieved" in Title VII, the Court in *Thompson* relied upon, and cited with approval, *Trafficante*'s "holding" under the FHA. *Id.* at 177.

The principle applies with equal force here. When Congress enacted Title VII, it intended the term "aggrieved" to be "construed more narrowly than the outer boundaries of Article III." *Id.* When Congress used the same term in the FHA, it intended it to have the same meaning. Just as there is "no reason" why that term in Title VII "should be given a narrower meaning," there is no reason why that term in the FHA should be given a broader one. *Id.*

b. *Same presumption of congressional intent.* That conclusion is reinforced by the presumption that "a statutory cause of action extends only to plaintiffs whose interests fall within the zone of interests protected by the law invoked." *Lexmark*, 134 S. Ct. at 1388 (internal quotation marks omitted). As a unanimous Court recognized in *Lexmark*, the zone-of-interests limitation has deep "roots" in English common law. *Id.* at 1389 n.5 (citing W Page Keeton et al., *Prosser and Keeton on the Law of Torts* § 36, at 229-230 (5th ed. 1984), and *Gorris* v. *Scott*, [1874] 9 LR Exch. 125 (Eng.)). And because Congress is presumed to legislate against the background of the common law, *see id.*, the zone-of-interests limitation "applies to *all* statutorily created causes of action * * *, unless it is expressly negated." *Id.* at 1388 (emphasis added) (internal quotation marks omitted); *see also Astoria Fed. Sav. & Loan Ass'n* v

Solimino, 501 U.S. 104, 108 (1991) ("Congress is understood to legislate against a background of common-law adjudicatory principles.").

Nothing expressly negates the zone-of-interests limitation in the FHA. Quite the opposite. The FHA uses the term "aggrieved." 42 U.S.C. § 3613(a)(1)(A). As the Court explained in *Thompson*, the "common usage" of that term supports application of the zone-of-interests limitation. 562 U.S. at 177 Examples of where the term is so used include not only Title VII but also the APA. *Id.* at 177-178. Indeed, the term "aggrieved" has "a long history in federal administrative law," and has for decades been construed in the APA to incorporate a zone-of-interests test. *Dir., Office of Workers' Comp. Programs* v *Newport News Shipbuilding & Dry Dock Co.*, 514 U.S. 122, 126-127 (1995); *see Ass'n of Data Processing Serv. Orgs., Inc.* v. *Camp*, 397 U.S. 150, 153 (1970).

Moreover, the FHA defines "aggrieved person" to include "any person" who "claims to have been injured," or "believes [he] will be injured," "by a discriminatory housing practice." 42 U.S.C. § 3602(i). In *Lexmark*, the Court construed similar language in the Lanham Act—authorizing suit by "any person who believes that he or she is likely to be damaged," 15 U.S.C. § 1125(a)(1)—to contain a zone-of-interests limitation. 134 S. Ct. at 1388-1389. Far from negating the limitation, the text of the FHA supports it.

That text stands in stark contrast with that of the Endangered Species Act (ESA), which provides simply that "any person may commence a civil suit." 16 U.S.C. § 1540(g)(1). In *Bennett* v. *Spear*, 520 U.S. 154 (1997), the Court described that language as "an authorization of remarkable breadth when compared

with the language Congress ordinarily uses." *Id.* at 164-165. The ESA lacks any "restrictive" terms like "adversely affected" or "injured"; "any person" is not qualified by such words. *Id.* at 165. Taking "any person" at "face value," then, the Court held that the ESA "negates the zone-of-interests test." *Id.* at 164, 165. The FHA, however, contains the very "restrictive" language the ESA lacks. Congress has not expressly negated the zone-of-interests limitation in the FHA.

c. *Same absurd consequences.* Finally, "interpretations of a statute which would produce absurd results are to be avoided." *Griffin* v. *Oceanic Contractors, Inc.*, 458 U.S. 564, 575 (1982). The Court in *Thompson* explained that "[i]f any person injured in the Article III sense by a Title VII violation could sue, absurd consequences would follow." 562 U.S. at 176-177. The same is true under the FHA. The Court in *Thompson* thought it would be "absurd" to allow a shareholder "to sue a company for firing a valuable employee for racially discriminatory reasons, so long as he could show that the value of his stock decreased as a consequence." *Id.* at 177. But allowing anyone with Article III standing to sue would produce a similar absurdity under the FHA: A shareholder could sue Wells Fargo for engaging in allegedly discriminatory practices, "so long as he could show that the value of his stock decreased as a consequence." *Id.*

That is not all. The same shareholder could also file a complaint with the Secretary, and if the Secretary found "reasonable cause" to believe there was discrimination, the shareholder could require the Attorney General to file a civil action on his behalf. 42 U.S.C. §§ 3610(a), (g), 3612(a), (*o*). What is more,

that shareholder would also have the statutory right to intervene in other enforcement proceedings before the Secretary and civil actions brought by the Attorney General. *See id.* §§ 3612(c), (*o*)(2), 3614(e). Such participation would serve only to shift attention away from those whose interests the statute was truly meant to protect, further exacerbating the absurdity of an overly expansive reading of "aggrieved."

And shareholders are only one example. Others technically injured in the Article III sense could sue and intervene, too. In the aftermath of foreclosures, utility companies could sue under the FHA for loss of revenue. Local businesses, from bowling alleys to coffee shops to dry cleaners to restaurants, could sue for loss of customers. Landscapers, plumbers, and housekeepers could sue for loss of work. And so on. The list would include anyone, like a shareholder, who could assert some economic harm, no matter how "unrelated to the statutory prohibitions" in the FHA. *Thompson*, 562 U.S. at 178.

Congress could not have possibly intended the term "aggrieved" to be construed so broadly. What is true of Title VII is also true of the FHA: "[T]he term 'aggrieved' must be construed more narrowly than the outer boundaries of Article III." *Id.* at 177

3. It is true that prior opinions of this Court have stated that the term "aggrieved" in the FHA extends as far as Article III permits. Pet. App. 39a-41a. But those statements should not stand in the way of the best interpretation of the FHA.

a. First and foremost, the Court itself has classified those statements as dicta. *See Thompson*, 562 U.S. at 176-177 (contrasting *Trafficante*'s "dictum"

with its "very holding"); *id.* at 176 (emphasizing that "the holdings of those cases are compatible with the 'zone of interests' limitation"). And the opinions themselves bear out that description.

Start with *Trafficante*, where the dictum originated. In *Trafficante*, residents of an apartment complex filed a complaint with the Secretary as "person[s] aggrieved" under former § 810 of the FHA, claiming that the owner of the complex had discriminated against minorities in the rental of apartments. 409 U.S. at 206-208.[4] The Court noted that the Third Circuit had construed similar language in Title VII as "'defin[ing] standing as broadly as is permitted by Article III.'" *Id.* at 209 (quoting *Hackett* v. *McGuire Bros.*, 445 F.2d 442, 446 (3d Cir. 1971)). But as the Court explained in *Thompson*, "the *Trafficante* opinion did not adhere to [that dictum] in expressing its [FHA] holding that residents of an apartment complex could sue." 562 U.S. at 176. Rather, the opinion said: "With respect to suits brought under [the FHA], we reach the same conclusion, *insofar as tenants of the same housing unit that is charged with discrimination are concerned.*" *Trafficante*, 409 U.S. at 209 (emphasis added) (foot-

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[4]Former § 810 of the FHA authorized a "person aggrieved" to file a complaint with the Secretary, and then to "commence a civil action" in federal court if the Secretary was unable to obtain "voluntary compliance" with the statute. Pub. L. No. 90-284, tit. VIII, § 810(a), (d), 82 Stat. 73, 85-86 (1968). The section also defined "person aggrieved" as "[a]ny person who claims to have been injured by a discriminatory housing practice or who believes that he will be irrevocably injured by a discriminatory housing practice." *Id.*, tit. VIII, § 810(a), 82 Stat. at 85.

note omitted); *see also id.* at 212 (recognizing the "standing" of "all *in the same housing unit* who are injured by racial discrimination in the management of those facilities" (emphasis added)). As *Trafficante* noted, such tenants have an interest in enjoying the "important benefits from interracial associations," *id.* at 210, including "living in an integrated community," *id.* at 208. That interest is no doubt one the FHA was meant to protect, making *Trafficante*'s holding "fully consistent" with the zone-of-interests limitation. *See Thompson*, 562 U.S. at 177.

To be sure, "[l]ater opinions" have "reiterate[d]" the "*Trafficante* dictum" about Article III. *Id.* at 176. But those reiterations are dicta, too. As the Court said in *Thompson*, the "holdings" of those later opinions are "compatible with the 'zone of interests' limitation" as well. *Id.*

In *Gladstone*, a village and some residents sued in federal court under former § 812 of the FHA, claiming that realtors "were engaging in racial 'steering,' *i.e.*, directing prospective home buyers interested in equivalent properties to different areas according to their race." 441 U.S. at 93-94.[5] The plaintiffs' interests were "similar to" those in *Trafficante*: The residents asserted an interest in "living in an integrated society"; the village, in maintaining "an

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[5]Former § 812 authorized the commencement of a civil action in the first instance, without having previously pursued administrative relief with the Secretary. Pub. L. No. 90-284, tit. VIII, § 812(a), 82 Stat. at 88. Unlike former § 810, § 812 did not use the term "person aggrieved." Instead, § 812 spoke in the passive voice: "The rights granted by sections 803, 804, 805, and 806 may be enforced by civil actions in appropriate United States district courts * * * " *Id.*

integrated neighborhood." *Id.* at 110-111. Thus, although *Gladstone* reiterated that "[s]tanding" under the FHA extends as far as Article III, *id.* at 109, that statement was no more necessary than it was in *Thompson*; the plaintiffs' interests fell well within the statutory zone of interests anyway. *See id.* at 100 n.6 (noting that "nonconstitutional limitations on standing," such as the zone-of-interests test, are "to be applied in appropriate circumstances"). *Gladstone* went beyond *Trafficante* in only one major respect: It clarified that the same set of "aggrieved" persons who could pursue *administrative* remedies under former § 810 could also pursue *judicial* remedies under former § 812. *See id.* at 102-106.

Havens followed a similar script. The plaintiffs included a nonprofit organization and so-called "testers"—"individuals who, without an intent to rent or purchase a home or apartment, pose as renters or purchasers for the purpose of collecting evidence of unlawful steering practices." *Havens*, 455 U.S. at 367-368, 373. The plaintiffs sued in federal court under former § 812, claiming that the owner of two apartment complexes was falsely informing minorities that there were no apartments available. *Id.* at 368. *Havens* reiterated that "Congress intended standing under § 812 to extend to the full limits of Art. III." *Id.* at 372 (internal quotation marks omitted). But just as in *Trafficante* and *Gladstone*, that statement was dictum. One of the plaintiffs, a black tester, was herself discriminated against in the dissemination of housing information: She was given false information because of her race. *Id.* at 374, 375. And the nonprofit organization, which hired the tester, had a "noneconomic interest in encouraging open housing" that was "perceptibly

impaired" when the organization "devote[d] significant resources to identify and counteract" the owner's discriminatory practices. *Id.* at 368, 379 & n.20 (internal quotation marks omitted). Because the interests of these plaintiffs, like those in *Trafficante* and *Gladstone*, were in fact related to the FHA's statutory prohibitions, *Havens*' holding that they could sue is compatible with the zone-of-interests test.

That leaves *Bennett*, in which the Court again repeated *Trafficante*'s dictum that "standing was expanded to the full extent permitted under Article III" by the FHA. *Bennett*, 520 U.S. at 165. *Bennett*, however, was a case about the ESA, not the FHA, so whatever that opinion said about the FHA was merely dictum. *Id.* at 164. Moreover, *Bennett* acknowledged that the text of the ESA is different from that of the FHA, so its holding cannot be controlling here. *See id.* at 166; *supra* pp. 17-18 (discussing the differences between the FHA and the ESA).

In short, the Court has said that "standing" under the FHA extends as far as Article III only in dicta. Dicta do not bind this Court; only holdings are entitled to *stare decisis* effect. *See 14 Penn Plaza LLC* v. *Pyett*, 556 U.S. 247, 264 n.8 (2009) (explaining that there were no "*stare decisis* concerns" where the Court's opinion did "not contradict the holding" of an earlier decision). And the dicta here were not even accompanied by any reasoning; part of a single paragraph in *Trafficante* was simply repeated out of context and without examination. Accordingly, the Court in this case should do precisely what it did in *Thompson*: dismiss as "ill-considered" the "*Trafficante* dictum" and its later "reiterat[ions]," and hold that

"the term 'aggrieved' must be construed more narrowly than the outer boundaries of Article III." *Thompson*, 562 U.S. at 176-177.[6]

b. Nor can it be said that Congress ratified the *Trafficante* dictum or its later reiterations in amending the FHA in 1988. To be sure, Congress amended the statute without materially altering the definition of "aggrieved." *See* Fair Housing Amendments Act of 1988, Pub. L. No. 100-430, 102 Stat. 1619, 1619-1636. And in doing so, Congress presumably accepted the *holdings* of this Court's prior opinions in *Trafficante*, *Gladstone*, and *Havens*. *See Inclusive Cmtys.*, 135 S. Ct. at 2520 (concluding that "Congress accepted and ratified the unanimous *holdings* of the Courts of Appeals finding disparate-impact liability" (emphasis added)). After all, those holdings represented a "*settled* judicial construction" of the FHA. *Jama* v. *Immigration & Customs Enforcement*, 543 U.S. 335, 351 (2005) (emphasis added) (internal quotation marks omitted); Scalia & Garner, *supra*, at 325 (explaining that application of the "prior-

[6]If this Court disagrees and thinks those older statements represent holdings, those holdings should be overruled. There are special justifications for doing so. First, overruling those statements would "achieve a uniform interpretation of similar statutory language," bringing the Court's interpretation of the FHA in line with its interpretation of Title VII and the APA. *Rodriguez de Quijas* v. *Shearson/Am. Express, Inc.*, 490 U.S. 477, 484 (1989). Leaving those statements in place, by contrast, would make nonsense of the *corpus juris*. Second, overruling those statements would not affect the outcomes in *Trafficante*, *Gladstone*, *Havens*, or *Bennett*. As explained, the outcomes in those cases are compatible with the zone-of-interests limitation. This case thus differs from the typical situation, where overruling a holding would also entail disavowing the outcome of a prior decision.

construction canon" depends on whether a prior construction can "justifiably" be regarded as "settled law").

The Court should *not* presume, however, that Congress also ratified the *dicta* of those prior opinions. "Dictum settles nothing, even in the court that utters it." *Jama*, 543 U.S. at 351 n.12. And it would stretch a legal fiction too far to believe that each time Congress amends a statute, it intends to silently embrace everything this Court has uttered about the terms Congress continues to use. This Court should thus reject the notion that Congress ratified the *Trafficante* dictum or any later reiteration of it when it amended the FHA in 1988. *See id.* (concluding that "dicta" in prior judicial opinions did "not lend any additional weight" to the argument that Congress had "ratified" a particular construction of a statute).

Indeed, the legislative history confirms that Congress meant to ratify the holdings, not the dicta, of those prior opinions. The relevant House Report refers explicitly to the "broad *holdings*" of *Gladstone* and *Havens*. H.R. Rep. No. 100-711, at 23 (1988) (emphasis added). And the House Report even specifies what those "holdings" are: In *Gladstone*, "the Supreme Court affirmed that standing requirements for judicial and administrative review are identical," while in *Havens*, "the Court held that 'testers' have standing to sue." *Id.* Those were the holdings that Congress meant to "reaffirm," and the 1988 amendments did just that. *Id.* The amendments moved the definition of "aggrieved person" into the FHA's definitions section, § 802. Pub. L. No. 100-430, sec. 5(b), 102 Stat. at 1619-1620 (codified at 42 U.S.C. § 3602). By sticking with "language

similar to that contained in [former] Section 810" as its "definition" of "aggrieved person," the amendments reaffirmed *Havens*' holding that "'testers' have standing to sue." H.R. Rep. No. 100-711, at 23. And by using that defined term consistently throughout the statute—including in new § 813, the analogue to former § 812—the amendments reaffirmed *Gladstone*'s holding that "standing requirements for judicial and administrative review are identical." *Id.*

Conspicuously absent from the 95-page House Report is any mention of dicta regarding the outer boundaries of the term "aggrieved." Given that the House Report went out of its way to discuss the actual holdings of *Gladstone* and *Havens*, the fact that it did not even mention those dicta only confirms that Congress did not intend to ratify them. Indeed, if Congress ratified anything beyond the Court's prior FHA holdings, it is this Court's longstanding construction of the term "aggrieved" under the APA, not loose dicta in *Trafficante* and later cases. *See Data Processing*, 397 U.S. at 153; H.R. Rep. No. 100-711, at 36 (explaining that the "rights of parties" under new § 812(c) are "those provided under the Administrative Procedure Act"); *Bragdon* v. *Abbott*, 524 U.S. 624, 645 (1988) ("When * * * judicial interpretations have settled the meaning of an existing statutory provision, repetition of the same language in a new statute indicates, as a general matter, the intent to incorporate its * * * judicial interpretations as well.").

In any event, the ratification canon is just one canon, which must yield to "other sound rules of interpretation." Scalia & Garner, *supra*, at 324. Here, all of the other rules of interpretation point in the same

direction: that "aggrieved" must be construed more narrowly than Article III. And one of those rules—the presumption that Congress legislates against the background of the zone-of-interests limitation—applies unless it is "*expressly* negated." *Lexmark*, 134 S. Ct. at 1388 (emphasis added) (internal quotation marks and brackets omitted). The ratification canon—a canon about what Congress might have "*impliedly* approved"—cannot overcome that presumption. *Jama*, 543 U.S. at 351 (emphasis added) (internal quotation marks omitted). Accordingly, this Court should hold that the term "aggrieved" in the FHA incorporates a zone-of-interests limitation.

B. The City's Alleged Injuries Fall Beyond The FHA's Zone Of Interests

Under the zone-of-interests test, "a plaintiff may not sue unless he falls within the zone of interests sought to be protected by the statutory provision whose violation forms the legal basis for his complaint." *Thompson*, 562 U.S. at 177 (internal quotation marks omitted). "[I]f the plaintiff's interests are so marginally related to or inconsistent with the purposes implicit in the statute," "it cannot reasonably be assumed that Congress intended to permit the suit." *Id.* at 178 (internal quotation marks omitted).

The zone-of-interests test has two steps. First, the Court "discern[s] the interests 'arguably to be protected' by the statutory provision at issue." *Nat'l Credit Union Admin.* v. *First Nat'l Bank & Trust Co.*, 522 U.S. 479, 492 (1998) (quoting *Data Processing*, 397 U.S. at 153). Second, the Court "inquire[s] whether the plaintiff's interests affected by [the alleged statutory violation] are among them." *Id.*

1. At the first step, discerning the interests sought to be protected by the statutory provisions at issue in this case "requires no guesswork." *Lexmark*, 134 S. Ct. at 1389. As this Court has said, "the FHA's central purpose" is to "eradicate discriminatory practices within a sector of our Nation's economy." *Inclusive Cmtys.*, 135 S. Ct. at 2521 (citing 42 U.S.C. § 3601 and H.R. Rep. No. 100-711, at 15). And §§ 804(b) and 805(a) of the FHA—the provisions "whose violation forms the legal basis" for the City's complaint—are integral to that purpose. *Thompson*, 562 U.S. at 177 (internal quotation marks omitted); *see* J.A. 344 (Compl. ¶ 185). Section 804(b) makes it unlawful "[t]o *discriminate* against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, *because of race, color, religion, sex, familial status, or national origin*." 42 U.S.C. § 3604(b) (emphases added). And § 805(a) makes it unlawful "to *discriminate* against any person" in a residential real estate-related transaction "*because of race, color, religion, sex, handicap, familial status, or national origin*." *Id.* § 3605(a) (emphases added).

In short, §§ 804(b) and 805(a) are *non-discrimination* provisions. The interest they seek to protect is an interest against discrimination on the basis of race, national origin, and other enumerated categories. Accordingly, "the plaintiff must establish that the injury he complains of (*his* aggrievement, or the adverse effect *upon him*)" is an injury to *his* interest in non-discrimination. *Lujan* v. *Nat'l Wildlife Fed'n*, 497 U.S. 871, 883 (1990). That does not mean that the plaintiff himself must have been discriminated against by the defendant. But it does mean that the plaintiff's injury must, at the very

least, depend on the discriminatory nature of the defendant's conduct. Otherwise, the plaintiff's injury would be unrelated to the statutory prohibition on discrimination.

2. The question, then, is whether the City has pleaded an injury to an interest in non-discrimination. It has not.

The only injuries pleaded in the City's complaint are what the City describes as "*financial* injuries." J.A. 334 (Compl. ¶ 153) (emphasis added). First, the City claims that it "has been injured by a reduction in property tax revenues from foreclosures." J.A. 334 (capitalization and boldface omitted). And second, the City claims that it "is injured because it provided and still must provide costly municipal services for foreclosure properties." J.A. 338 (capitalization and boldface omitted).

Do these financial injuries depend on the discriminatory nature of Wells Fargo's alleged conduct? No. What allegedly injured the City were the foreclosures. And under the City's own theory, it would have been harmed by those foreclosures all the same, regardless of the race, national origin, or other protected status of the people whose homes were foreclosed upon. From the perspective of the City's pocketbook, whether those people were discriminated against does not matter. If the same homes had been subject to foreclosure but their owners had *not* suffered any discrimination, the City would have faced the same alleged reduction in revenues and increase in spending. Thus, the City has pleaded no injury to an interest in non-discrimination.

To illustrate, consider what the City's financial injuries would have been if Wells Fargo had em-

ployed the same alleged predatory loan practices, but *without* discriminating. That is, imagine what would have happened if, instead of allegedly targeting African-Americans and Latinos, Wells Fargo had issued subprime loans as extensively to people of *all* races—thereby increasing the number of subprime loans issued to whites, Asians, and others. On the City's own theory, the result would have been even more foreclosures, and thus even greater economic harm to the City. The fact that the City's financial injuries could have been *worse* in the absence of discrimination proves that the City lacks an interest in non-discrimination itself.

Indeed, the City is no different from the hypothetical shareholder in *Thompson*, who claims that "the value of his stock decreased" because the company "fir[ed] a valuable employee for racially discriminatory reasons." 562 U.S. at 177 The shareholder is injured because the company terminated a valuable employee. But the shareholder would be injured, regardless of whether the termination was based on race; what matters to the shareholder is that the employee was economically valuable, not that the employee was discriminated against. Similarly here, the City is allegedly injured because there were foreclosures. But the City would have suffered the same alleged injuries, regardless of whether the foreclosures were the result of discrimination; what matters to the City is that there were foreclosures, not that they happened to people of a certain race or national origin. Like the hypothetical shareholder in *Thompson*, the City lacks an interest in non-discrimination and thus falls beyond the statute's zone of interests. *See Air Courier Conference of Am.* v. *Am. Postal Workers Union*, 498 U.S. 517, 519

(1991) (holding that postal employees were not within the zone of interests of statutes governing the scope of the Postal Service's monopoly); *Block* v. *Cmty. Nutrition Inst.*, 467 U.S. 340, 341 (1984) (holding that individual consumers of dairy products could not sue to challenge milk market orders issued under the Agricultural Marketing Agreement Act).

By contrast, all of the plaintiffs in *Trafficante*, *Gladstone*, and *Havens* were within the FHA's zone of interests because they claimed injury to an interest in non-discrimination. In each case, the plaintiffs' injuries depended on the discriminatory nature of the defendants' conduct—*i.e.*, the fact that the challenged practice was deployed based on membership in a protected class.

Residents in *Trafficante* and in *Gladstone* claimed the loss of the "benefits of living in an integrated" community. *Trafficante*, 409 U.S. at 208; *Gladstone*, 441 U.S. at 111. That injury depended on the discriminatory nature of the challenged practices. Thus, in *Trafficante*, if the alleged rental practices—such as manipulating the waiting list for apartments—had not been deployed against applicants *based on their race*, then the apartment buildings would have been less segregated. *See* 409 U.S. at 207-208. By the same token, in *Gladstone*, if home seekers had not been guided toward particular neighborhoods *based on their race*, then the community would have remained integrated. *See* 441 U.S. at 95. Accordingly, the residents had an interest in non-discrimination, which was injured when the defendants in each case "manipulated" the "racial composition" of the community. *Id.* at 114; *see also Trafficante*, 409 U.S. at 207-208.

The village in *Gladstone* similarly alleged that the realtors' racial steering was "affecting the village's racial composition, replacing what [was] an integrated neighborhood with a segregated one." 441 U.S. at 110. That injury depended on the discriminatory nature of the practice as well—namely, the fact that blacks were being steered toward the neighborhood while whites were being steered away. *Id.* The village thus had an interest in non-discrimination, which was injured when the realtors engaged in racial steering.

The plaintiffs in *Havens* claimed injury to the same interest. The black tester suffered injury when she was denied truthful housing information because of her race; as a victim of the defendants' steering practices, she sued to vindicate her own interest in non-discrimination. 455 U.S. at 374. And when the nonprofit organization "devote[d] significant resources to identify and counteract" those same "racially discriminatory" practices, it, too, suffered injury. *Id.* at 379 (internal quotation marks omitted). Its injury likewise depended on the fact of discrimination; indeed, it was a response to it. The organization thus had an interest in non-discrimination—namely, "encouraging open housing"—which was "perceptibly impaired" by the defendants' steering practices. *Id.* at 379 & n.20.

The City fundamentally differs from the plaintiffs in these other cases: Unlike them, its asserted injury does *not* depend on the discriminatory nature of the challenged conduct. Instead, the City has pleaded purely financial injuries, which are indifferent to the race, national origin, or other protected status of the people whose homes were foreclosed upon. The City's injuries are thus unrelated to the interest in

non-discrimination that §§ 804(b) and 805(a) were meant to protect. For this reason alone, the City's complaint should be dismissed.

3. In seeking reconsideration of the District Court's dismissal of the complaint, the City proposed an amended complaint with additional allegations about the City's "interest[s]." J.A. 416 (Proposed First Am. Compl. ¶ 156). To the extent the Court wishes to consider those proposed amendments, it should conclude, as the District Court did, that they are futile. Pet. App. 79a n.1; *see id.* at 72a-73a.

The City's proposed amendments include new allegations that Wells Fargo's lending practices "frustrate[]" the City's "interest[s] in promoting fair housing and securing the benefits of an integrated community." J.A. 416-417 (Proposed First Am. Compl. ¶ 156). To be sure, those are "among the *sorts* of interests" the FHA was meant to protect. *Nat'l Wildlife Fed'n*, 497 U.S. at 886. But the City's proposed amendments fail to plausibly suggest that "those interests *of* [*the City*] were actually affected." *Id.*; *see also id.* at 883 (requiring the plaintiff to "establish that the injury he complains of (*his* aggrievement, or the adverse effect *upon him*) falls within the 'zone of interests'").

Take the City's allegation that it has an "interest in promoting fair housing." J.A. 416-417 (Proposed First Am. Compl. ¶ 156). According to the City, Wells Fargo's alleged conduct "frustrates" and "interfere[s] with" that interest. *Id.* But that is merely a "conclusory" assertion, "devoid of 'further factual enhancement.'" *Ashcroft* v. *Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp.* v. *Twombly*, 550 U.S. 544, 557 (2007)); *see also id.* at 679 (explaining that

pleadings that "are no more than conclusions[] are not entitled to the assumption of truth"). Without allegations of concrete harm, promoting fair housing amounts to nothing more than an "abstract social interest[]," insufficient to establish Article III injury, let alone bring the City within the FHA's zone of interests. *Havens*, 455 U.S. at 379; *see also Sierra Club* v. *Morton*, 405 U.S. 727, 739 (1972) ("[A] mere 'interest in a problem' * * * is not sufficient by itself to render the organization 'adversely affected' or 'aggrieved' within the meaning of the APA."). The City's proposed amended complaint does not adequately plead that the City's interest in promoting fair housing was "actually affected." *Nat'l Wildlife Fed'n*, 497 U.S. at 886.

The same is true of the City's other newly asserted interest in "securing the benefits of an integrated community" J.A. 416-417 (Proposed First Am. Compl. ¶ 156). The City claims that Wells Fargo's alleged conduct "frustrates" this interest, too. *Id.* But unlike the plaintiffs in racial steering cases like *Trafficante*, *Gladstone*, and *Havens*, the City never explains how Wells Fargo's lending threatened to change the racial composition of Miami or any of its neighborhoods. Indeed, the neighborhoods allegedly affected by foreclosures were hardly integrated to begin with; according to the City, they were "predominantly minority neighborhoods." J.A. 429 (Proposed First Am. Compl. ¶ 192). And there is no allegation regarding where minorities affected by the foreclosures moved, or who may have subsequently occupied their homes. The City's allegation that Wells Fargo deprived "African-American and Latino neighborhoods" of the benefits of integration is thus im-

plausible. J.A. 410 (Proposed First Am. Compl. ¶ 141).

Moreover, despite "sprinkling in" new allegations about its interests, Pet. App. 79a n.1, the City has not altered the nature of the relief it seeks: damages for "lost tax revenues and the need to provide increased municipal services." J.A. 429 (Proposed Am. Compl. ¶ 192). Those requested damages have no connection whatsoever to the City's newly asserted interests in "promoting fair housing and securing the benefits of an integrated community." J.A. 416-417 (Proposed First Am. Compl. ¶ 156). The fact that the City does not even seek any damages relating to those interests only confirms that those interests were not actually injured. And even if they were, the City would not be able to recover the damages it seeks, which have nothing to do with those interests at all.

Because the City cannot plead an injury to an interest in non-discrimination, its complaint should be dismissed and its proposed amendments rejected.

II. THE CITY HAS NO CAUSE OF ACTION BECAUSE THE ALLEGED STATUTORY VIOLATIONS DID NOT PROXIMATELY CAUSE ITS INJURIES

Even assuming that the City's asserted financial injuries fall within the FHA's zone of interests, the City lacks a cause of action because any such injuries were not proximately caused by a violation of the FHA.

This Court "generally presume[s] that a statutory cause of action is limited to plaintiffs whose injuries are proximately caused by violations of the statute." *Lexmark*, 134 S. Ct. at 1390. In its recent unani-

mous opinion in *Lexmark*, the Court explained that the hallmark of proximate cause is "a sufficiently close connection" between "the harm alleged" and "the conduct the statute prohibits." *Id.* That "sufficiently close connection" encompasses concepts like foreseeability and directness—both of which bar recovery for too-attenuated harms.

The City's suit here falls well beyond the bounds of proximate cause. The alleged harm is several steps removed from the purported FHA violations: Wells Fargo allegedly engaged in discriminatory lending practices; which eventually led to more defaults on those loans; which led to an increase in foreclosures in minority neighborhoods; which led to reduced property values of the foreclosed homes, or reduced property values of neighboring homes; which led to decreased property tax revenue for the City. J.A. 269-272, 335-338 (Compl. ¶¶ 6-12, 156-170). Or, alternatively: Wells Fargo allegedly engaged in discriminatory lending practices; which eventually led to more defaults on those loans; which led to an increase in foreclosures in minority neighborhoods; which led to homes remaining vacant; which led to "increased vagrancy, criminal activity, and threats to public health and safety"; which led to an uptick in demand for municipal services; which led to increased City spending. J.A. 339-341 (Compl. ¶¶ 171-179). This is precisely the type of suit that proximate cause was meant to bar.

A. The FHA Requires Proximate Cause

The Eleventh Circuit in this case held that the FHA incorporates a proximate-cause requirement. Pet. App. 16a, 48a. Every other court of appeals to consider the question has reached the same conclu-

sion. *See Pac. Shores Props., LLC* v. *City of Newport Beach*, 730 F.3d 1142, 1167-1168 (9th Cir. 2013); *Samaritan Inns, Inc.* v. *Dist. of Columbia*, 114 F.3d 1227, 1234 (D.C. Cir. 1997). And at the certiorari stage in this Court, the City did not dispute that proximate cause is required. *See Alabama* v. *Shelton*, 535 U.S. 654, 660 n.3 (2002) (declining to consider an argument for affirmance that was not made in the respondent's brief in opposition to certiorari).

Nor could it. As noted, the FHA grants a cause of action to "aggrieved person[s]," 42 U.S.C. § 3613(a)(1)(A)—persons who claim that they "have been injured by" or "will be injured by" discriminatory housing practices. *Id.* § 3602(i). Although the text of the statute says little about the type of causation required, the FHA "is, in effect, a tort action." *Meyer* v. *Holley*, 537 U.S. 280, 285 (2003); *see also Curtis* v. *Loether*, 415 U.S. 189, 195 (1974) ("A damages action under the statute sounds basically in tort"). And as all first-year law students learn, proximate cause is an integral element of a tort claim. *See* 1 Dan B. Dobbs et al., *The Law of Torts* § 198, at 680 (2d ed. 2011). Indeed, the default common-law rule "in all cases of loss" is that courts will "attribute it to the proximate cause, and not to any remote cause." *Lexmark*, 134 S. Ct. at 1390 (quoting *Waters* v. *Merchants' Louisville Ins. Co.*, 36 U.S. (11 Pet.) 213, 223 (1837)).

This Court presumes that Congress legislates against the background of that "common-law rule and does not mean to displace it *sub silentio*." *Id.* Accordingly, proximate cause is "built into" a variety of federal causes of action, even where the text of the statute does not expressly mention it. *Paroline* v. *United States*, 134 S. Ct. 1710, 1720 (2014); *see, e.g.*,

Lexmark, 134 S. Ct. at 1390-1391 (Lanham Act); *Dura Pharms., Inc.* v. *Broudo*, 544 U.S. 336, 346 (2005) (Securities Exchange Act); *Holmes* v. *Sec. Inv'r Prot. Corp.*, 503 U.S. 258, 268 (1992) (Racketeer Influenced and Corrupt Organizations Act (RICO)); *Associated Gen. Contractors of Cal., Inc.* v *Cal. State Council of Carpenters*, 459 U.S. 519, 535-536 (1983) (Clayton Antitrust Act). The FHA is no different. It was enacted against the same background presumption. Thus, like other federal statutes, it incorporates traditional notions of proximate cause, and nothing in the text of the FHA suggests otherwise.

B. Proximate Cause Requires A Direct Relationship Between The Defendant's Conduct And The Plaintiff's Injury

1. Proximate cause demands "a sufficiently close connection" between the statutory violation and the injury alleged. *Lexmark*, 134 S. Ct. at 1390. Tort law has long identified two critical aspects of that close connection: (1) whether the harm itself is *too fortuitous*, and (2) whether the plaintiff alleging the harm is *too far removed* from the violation. *See Paroline*, 134 S. Ct. at 1719 ("Proximate cause is often explicated in terms of foreseeability or the scope of the risk created by the predicate conduct."); Dobbs et al., *supra*, § 198, at 682-683 ("The most general and pervasive approach to scope of liability or proximate cause holds that a negligent defendant is liable for all the general kinds of harms he foreseeably risked by his negligent conduct and to the class of persons he put at risk by that conduct.").

The first aspect corresponds to the concept of *foreseeability*. In *Paroline*, for example, the Court explained that an immediate victim of child abuse

could not recover for damages from "a car accident on the way to her therapist's office." 134 S. Ct. at 1721. Such an unpredictable harm would be "akin to mere fortuity." *Id.*; *see also CSX Transp., Inc.* v. *McBride*, 564 U.S. 685, 718 (2011) (Roberts, C.J., dissenting) (hypothesizing, as an example of an unforeseeable injury, a railroad employee who spills hot coffee on his bare arm and burns himself after having removed his jacket to fix a negligently maintained boiler). And when the harm is too fortuitous—*i.e.*, when the harm is not reasonably foreseeable—"the causal link between conduct and result" is too "attenuated" to satisfy the proximate-cause requirement. *Paroline*, 134 S. Ct. at 1719.

The second aspect corresponds to the concept of *directness*. It evaluates the nature and number of causal links between the defendant's conduct and the plaintiff's harm. *See Lexmark*, 134 S. Ct. at 1390 ("[T]he proximate cause requirement generally bars suits for alleged harm that is 'too remote' from the defendant's unlawful conduct."); *Hemi Grp., LLC* v. *City of New York*, 559 U.S. 1, 12 (2010) (focusing "on the directness of the relationship between the conduct and the harm"); *Holmes*, 503 U.S. at 268 (noting the "demand for some direct relation between the injury asserted and the injurious conduct alleged"); *Associated Gen. Contractors*, 459 U.S. at 540 (assessing "the directness or indirectness of the asserted injury"); *Pac. Operators Offshore, LLP* v. *Valladolid*, 132 S. Ct. 680, 692 (2012) (Scalia, J., concurring in part and in the judgment) (explaining that proximate cause "cut[s] off otherwise endless chains of cause-and-effect"). The "general" rule is that proximate cause cuts off liability after the "first step." *Lexmark*, 134 S. Ct. at 1394 (internal quotation

marks omitted). Only in "relatively unique circumstances" may a plaintiff recover for injuries suffered through an "intervening link," beyond that first step. *Id.* Such circumstances arise when "the injury alleged is so integral an aspect of the violation alleged" that "there can be no question that proximate cause is satisfied." *Id.* (internal quotation marks and brackets omitted).

To satisfy proximate cause under the FHA, therefore, the injuries must be both "direct and foreseeable." *Paroline*, 134 S. Ct. at 1722. In the mine-run case, these requirements are easily met. For instance, a person who is steered away from a neighborhood because of her race could sue to recover the cost of having to find housing elsewhere, the difference in the cost of living there, and damages for emotional distress. *See* 42 U.S.C. § 3613(c)(1). All of those injuries would be the direct and foreseeable result of discrimination against her. Similarly, a resident of the same neighborhood who is denied the opportunity to live in an integrated community could sue for the loss of social and professional opportunities. Those injuries would be the direct and foreseeable result of discrimination as well.

There are cases, however, in which foreseeability or directness would not be met. Consider first a hypothetical plaintiff whose application for housing is rebuffed for discriminatory reasons; because she has been denied housing, she drives to a different neighborhood to continue her search, is involved in a car accident along the way, and suffers a concussion. The FHA violation did not proximately cause her concussion because that harm is *too fortuitous* to be a *foreseeable* consequence of housing discrimination. Now consider a different hypothetical: Discriminato-

ry housing decisions in a neighborhood lower the demand for housing there, and fewer occupied houses mean less work for the neighborhood gardener, who buys fewer flowers from his preferred flower shop. Although no link in the causal chain is inherently unpredictable, the FHA violation did not proximately cause the flower shop's lost revenue because that plaintiff is *too far removed* to have a *direct* relationship with the FHA violation.

2. The Eleventh Circuit misunderstood the dual nature of proximate cause. It reduced the concept to "foreseeability," encompassing only the predictability of any one individual link in the causal chain. Pet. App. 56a.[7] The Eleventh Circuit's approach would thus preclude liability only in the event of a freak injury, which no one could predict.

That could not have been what Congress intended. As explained above, the proximate-cause requirement is generally understood to account for not only foreseeability, but also directness. Stripped of the

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[7]The term "foreseeability" has elsewhere been used to encompass *both* the predictability of any given layer of harm *and* the remoteness of the plaintiff from the prohibited conduct. *See* Dobbs et al., *supra*, § 202, at 695-696 ("The great majority of cases hold negligent defendants liable only for harm of the same general kind that they should have reasonably foreseen and should have acted to avoid. The same principle holds defendants liable only to plaintiffs who are in the same general class of people who were at risk from his negligence."); *Hemi Grp.*, 559 U.S. at 22-24 (Breyer, J., dissenting) (describing as "foreseeable" those losses that the defendant had intended, and emphasizing that the plaintiff fell within the class of persons the statute sought to protect). The Eleventh Circuit, however, eschewed any formulation that would consider the remoteness of a claimed injury.

latter, proximate cause would "hardly [be] a condition at all." *Consol. Rail Corp.* v. *Gottshall*, 512 U.S. 532, 553 (1994). Liability would extend to all remote-if-unremarkable consequences, stretching as far as the imagination. The causal chain could be never-ending—like in the children's book *If You Give a Mouse a Cookie*.

Proximate cause does not tolerate such infinite liability for good reason. The directness component serves several important functions.

First, it contributes to the overarching objective of proximate cause: the need to draw a line to cabin liability. "In a philosophical sense, the consequences of an act go forward to eternity." *Exxon Co., U.S.A.* v. *Sofec, Inc.*, 517 U.S. 830, 838 (1996) (quoting Keeton et al., *supra*, § 41, at 264). Yet "[s]omewhere a point will be reached when courts will agree that the link has become too tenuous." *Id.* (internal quotation marks omitted). The law cuts off liability at that point out "of convenience, of public policy, of a rough sense of justice." *CSX Transp.*, 564 U.S. at 692 (internal quotation marks omitted); *see also id.* at 707 (Roberts, C.J., dissenting) (proximate cause "limits liability at some point before the want of a nail leads to loss of the kingdom").

Second, barring recovery for remote injuries avoids a number of practical difficulties, as this Court first catalogued in the RICO context. For example, the more remote an injury is, "the more difficult it becomes to ascertain the amount of a plaintiff's damages attributable to the violation, as distinct from other, independent, factors." *Holmes*, 503 U.S. at 269. Similarly, awarding damages to plaintiffs at multiple different levels of attenuation could risk

duplicative recoveries. *Id.* And most notably, "directly injured victims can generally be counted on to vindicate the law as private attorneys general, without any of the problems attendant upon suits by plaintiffs injured more remotely." *Id.* at 269-270. All of those same practical considerations apply in an FHA case, just as in a RICO case.

Third, with respect to statutory causes of action like this one—in contrast with common-law tort claims—the directness component of proximate cause is a critical way to effectuate legislative purpose. Where "the evident policy" of a statute is to protect certain individuals, "the plaintiff must bring himself within that class in order to maintain an action based on the statute." Keeton et al., *supra*, § 36, at 224; *see also id.* § 43, at 286 ("a statute intended to protect only a particular class of persons * * * creates no duty to any other class"). If courts fail to distinguish between those losses directly caused by a statutory violation and those losses several degrees removed, they give effect only to Congress's intent to *deter* behavior and ignore Congress's complementary intent to *protect* a particular class.

3. The Eleventh Circuit nevertheless concluded that, in considering an FHA suit, it could ignore the directness or remoteness of a claimed injury. Pet. App. 49a, 53a. It pointed specifically to this Court's statement in *Lexmark* that the "[p]roximate-cause analysis is controlled by the nature of the statutory cause of action." 134 S. Ct. at 1390.

The Eleventh Circuit's reliance on *Lexmark* is misplaced. The Court in that case did not cast doubt on the "general[]" rule that proximate cause "bars suits for alleged harm that is 'too remote' from the defend-

ant's unlawful conduct." *Id.* Nor did it call into question the "general" rule that anyone "beyond the first step" is too remote. *Id.* at 1394 (internal quotation marks omitted). Instead, what the Court meant was that the nature of the statutory cause of action can determine whom that "first step" reaches.

The Court's own analysis in *Lexmark* proves the point. The Lanham Act prohibits false advertising. And theoretically, the Court acknowledged, an injury to a commercial competitor might be considered "derivative" of an injury suffered by a consumer deceived by the advertising. *Id.* at 1391. "[B]ut since the Lanham Act authorizes suit only for commercial injuries, the intervening step of consumer deception is not fatal to the showing of proximate causation required by the statute." *Id.* Rather, the competitor should be considered "directly" harmed. *Id.* at 1394. Thus, the statutory scheme did not negate certain aspects of proximate cause; it determined that harms to competitors properly fell within the "first step." Under a different statutory scheme geared toward consumers, by contrast, the very same false advertising claim might be considered too remote if asserted by a commercial competitor rather than a consumer herself. *That* is the sense in which "the nature of the statutory cause of action" controls the proximate-cause analysis. *Id.* at 1390.

So too here. The directness component of proximate cause applies to the FHA just as to the Lanham Act and to other federal statutory schemes. The FHA's text and purpose do, however, determine which types of plaintiffs stand at the "first step" from an alleged statutory violation.

The FHA is an antidiscrimination statute. So of course, those who have been discriminated against on the basis of a protected characteristic, including testers, have suffered an injury at the first step. *See Havens*, 455 U.S. at 374. But contrary to the Eleventh Circuit's suggestion, Pet. App. 53a, the first step can include more than just those victims. When, for instance, minorities are steered away from a community, those immediately harmed can also include the community's residents (who are deprived of "living in an integrated society") and the community itself (which is deprived of "an integrated neighborhood"). *Gladstone*, 441 U.S. at 110-111 (internal quotation marks omitted). There is no intervening step between their injuries and the injury to the person discriminated against; a single act of discrimination injures them all at the same time—denying one the right to live in the community, and the others the right to have her as a neighbor and resident. "[T]here is no reason to regard [one] party's injury as derivative of the other's." *Lexmark*, 134 S. Ct. at 1394. Each is injured at the first step.[8]

Even the nonprofit organization in *Havens*, though possibly a step removed from a discriminatory act, diverted resources to combat the specific housing discrimination at issue. *See* 455 U.S. at 368-369. At

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[8]To be sure, the Court has sometimes characterized "neighborhood" standing as "indirect." *Havens*, 455 U.S. at 375; *see also Gladstone*, 441 U.S. at 101-102. But that just means neighborhood residents are not themselves discriminated against; it does not mean their injury is less immediate for purposes of proximate cause. The FHA treats neighborhood residents as immediate victims, just as the Lanham Act treats commercial competitors as immediate victims. *Cf. Lexmark*, 134 S. Ct. at 1391.

a minimum, then, it presented the "relatively unique circumstances" in which there is a near-perfect correlation between the plaintiff's injury and the statutory violation. *See Lexmark*, 134 S. Ct. at 1394. The proximate-cause requirement was thus satisfied.

The statute teaches this much; ordinary principles of proximate cause do the rest.

C. The City's Alleged Injuries Are Too Remote

To recap: The "general" rule is that proximate cause does not extend "beyond the first step." *Lexmark*, 134 S. Ct. at 1394 (internal quotation marks omitted). But in "relatively unique circumstances," injuries suffered through an "intervening link" may be "so integral[ly]" tied to the statutory violation that proximate cause is satisfied. *Id.* (internal quotation marks omitted).

Here, the City falls far beyond the first step. And its injuries are not so tightly bound up in the claimed discrimination that this is the "relatively unique" case in which a derivative victim nevertheless satisfies proximate cause. Far from it.

1. The City relies on causal chains that are several links too long. Its complaint accuses Wells Fargo of violating the FHA by engaging in discriminatory lending practices, which resulted in unfavorable loan terms for minorities. J.A. 269-272 (Compl. ¶¶ 6-10). Those unfavorable loan terms, it alleges, caused the borrowers to default on the loans, which led to a "disproportionately high number of foreclosures * * * in the minority neighborhoods of Miami." J.A. 272 (Compl. ¶ 11). And those foreclosures, in turn, had two purported effects. First, the foreclosures led to abandoned homes, which caused the property values

of the abandoned homes and of other neighboring homes to drop, which in turn decreased the City's property tax revenues. J.A. 335-338 (Compl. ¶¶ 156-170). Second, the foreclosures led to abandoned homes, which lay abandoned for sufficient time to fall into disrepair, which encouraged vagrancy and crime, which increased the demand for services from various municipal agencies like the police and fire departments, which in turn caused an uptick in City spending. J.A. 339-341 (Compl. ¶¶ 171-179).

To complicate matters further, those causal chains involve a host of independent actors: borrowers, who defaulted; creditors, who foreclosed; neighbors, who moved away; buyers, who gave lower offers; assessors, who discerned lower home values; squatters, vandals, or other criminals, who congregated in or near the empty homes; police and fire departments (or policymakers above them), who adjusted the level of municipal services. All of these actors entered the scene long after Wells Fargo had exited. And the City does not and cannot allege that Wells Fargo maintained any influence over these many independent forces.

Under either of its two theories, then, the City's complaint contains several layers of attenuation. The City is not a person who was offered discriminatory loan terms, nor a person whose home was foreclosed upon, nor a person whose neighborhood composition was affected by discriminatory loan terms, nor a person whose property value decreased as a result of foreclosures, nor a person in a neighborhood experiencing foreclosure-induced blight. In fact, its purported injuries fall so far down the line that the relevance of any discrimination has faded away entirely; the foreclosures could have happened for

any reason and could have been distributed evenly across all races, and the City's damages would be no different. *See supra* pp. 29-30. Call it indirect, remote, or attenuated—whatever the label, the City "complain[s] of harm flowing merely from the misfortunes visited upon a third person by the defendant's acts" and thus "stand[s] at too remote a distance to recover." *Holmes*, 503 U.S. at 268-269.

Indeed, *Lexmark* described similar circumstances to exemplify the type of claim that flunks the proximate-cause test. After concluding that a commercial competitor could bring a Lanham Act claim if it could show "economic or reputational injury flowing directly from the [defendant's] deception," the Court cautioned that "[t]hat showing is generally not made when the deception produces injuries to a fellow commercial actor that in turn affect the plaintiff." *Lexmark*, 134 S. Ct. at 1391. For example, if the defendant's false advertising forces a competitor out of business, "the competitor's landlord, its electric company, and other commercial parties who suffer merely as a result of the competitor's inability to meet its financial obligations" are not entitled to bring suit. *Id.* (internal quotation marks and brackets omitted).

The City's claim is at least as attenuated as the hypothetical landlord's in *Lexmark*. Both the City and the landlord claim a statutory violation that causes economic harm to an immediate victim, whose troubled finances have monetary repercussions—whether lost tax revenue or lost rent—for more distant entities. And for good measure, the City here relies on a few extra steps (such as between discrimination and foreclosures, or between foreclosures and vagrancy) that introduce further extraneous varia-

bles. *See Holmes*, 503 U.S. at 269 (cautioning that "the less direct an injury is," the more likely "other, independent, factors" come into play).

Hemi Group offers another useful analogy As here, a city claimed that statutory violations had resulted in diminished tax revenues. *See* 559 U.S. at 6. And as here, the city relied on a multi-step causal theory: The defendant had committed RICO fraud by failing to provide customer information to the State, the State in turn was unable to provide information to the city, the city in turn could not determine which customers had paid a cigarette tax, and the city thus could not pursue those customers for unpaid taxes. *Id.* at 9. The majority had little trouble concluding that "the City's theory of causation requires us to move well beyond the first step" and "is far too indirect." *Id.* at 10. That was dispositive even though the city's loss of tax revenues may have been the *intended result* of the alleged scheme. *See id.* at 23-24 (Breyer, J., dissenting). The City here lacks even that connection. Its asserted harms are not just attenuated but also coincidental, no different from the harms that any other person or entity might suffer in a crippled housing market.[9]

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[9]The City has alleged that certain analytic tools could have predicted the foreclosures. *See* J.A. 277, 326 (Compl. ¶¶ 22, 139). But that is beside the point. As *Hemi Group* illustrates, the possibility that a defendant could have anticipated eventual effects on a remote plaintiff—or even intended those effects—is insufficient. *See* 559 U.S. at 10; *Consol. Rail*, 512 U.S. at 553 ("'[T]here are clear judicial days on which a court can foresee forever and thus determine liability but none on which that foresight alone provides a socially and judicially acceptable limit on recovery.'" (brackets in original) (quoting *Thing* v. *La Chusa*, 771 P.2d 814, 830 (Cal. 1989))). And in any event, the

2. Therein lies another fatal flaw in the City's theory: It has no principled stopping point. The Eleventh Circuit's narrow view of foreseeability required only that each level of harm flowed predictably to the next. Why stop, then, at the City's claimed loss of tax revenue? Lost revenue might foreseeably lead to a reduction in municipal workforces. So a laid-off city employee could presumably bring suit, too. And why stop at the city employee's claimed lost wages? If that individual is now unemployed, he might foreseeably spend less money at the local gas station fueling up for his commute. So the owner of the gas station could presumably bring suit, too. The possible effects, "like the ripplings of the waters," are "without end." *Consol. Rail*, 512 U.S. at 553.

Nor is it sufficient to draw the line at the City's asserted injuries and refuse to take any further steps. That is because the City alleges financial injuries that stem from an increase in home foreclosures, and innumerable other potential plaintiffs stand at the same distance from any discriminatory lending decisions. It is not difficult to imagine the many neighborhood businesses that might suffer financial injuries from a high foreclosure rate in their communities: the coffee shop, the dry cleaner, the landscaper, the plumber. From an attenuation standpoint, the City's claimed economic harm is no different. Neither it nor any of those other potential plaintiffs were discriminated against or have interests closely intertwined with those who were. So neither it nor any of those other potential plaintiffs

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assertion that Wells Fargo could have anticipated foreclosures does not mean that it equally could have anticipated the secondary or tertiary financial effects of such foreclosures.

can satisfy the FHA's proximate-cause requirement.[10]

In short, the City's claims here are "purely derivative." *Lexmark*, 134 S. Ct. at 1390. And nothing in the City's proposed amended complaint would change that outcome. Its claim for damages would still rely on the same lengthy causal chains involving lost tax revenues and increased municipal spending. J.A. 429 (Proposed First Am. Compl. ¶ 192). And the proposed amended complaint does not even bother to articulate how the City's newly asserted interests in "promoting fair housing and securing the benefits of an integrated community" were injured—much less explain how any injury was proximately caused by Wells Fargo's alleged conduct. J.A. 416-417 (Proposed First Am. Compl. ¶ 156); *see supra* pp. 33-35.

However elastic proximate cause might be, it cannot be stretched so far as to encompass the City's asserted injuries in this case. For this reason as

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[10]Indeed, the City's allegations of cause-and-effect-and-effect-and-effect are so tenuous that they fail even Article III's traceability requirement. *See Lujan* v. *Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (requiring that the injury "be fairly traceable to the challenged action of the defendant and not the result of the independent action of some third party" (internal quotation marks, brackets, and ellipses omitted)). Any loss of city revenues or increase in city expenditures is not fairly traceable to Wells Fargo's conduct in light of the many intervening actions of third parties—the personal finances of homeowners, the decisions of local vagrants and criminals, the rising regional unemployment rate, the bursting American housing bubble, and the global recession, to name a few. For the same reasons, the City's financial injuries were not foreseeable, even under the Eleventh Circuit's misguided test.

well, the City's complaint should be dismissed, and its proposed amendments rejected.

CONCLUSION

The judgment of the Court of Appeals should be reversed.

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ADDENDUM

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STATUTORY PROVISIONS INVOLVED

FHA § 802, 42 U.S.C. § 3602, provides in pertinent part:

Definitions

As used in this subchapter—

(a) "Secretary" means the Secretary of Housing and Urban Development.

* * * *

(d) "Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11, receivers, and fiduciaries.

* * * *

(f) "Discriminatory housing practice" means an act that is unlawful under section 3604, 3605, 3606, or 3617 of this title.

* * * *

(i) "Aggrieved person" includes any person who—

(1) claims to have been injured by a discriminatory housing practice; or

(2) believes that such person will be injured by a discriminatory housing practice that is about to occur.

* * * *

FHA § 804, 42 U.S.C. § 3604, provides in pertinent part:

Discrimination in the sale or rental of housing and other prohibited practices

As made applicable by section 3603 of this title and except as exempted by sections 3603(b) and 3607 of this title, it shall be unlawful—

(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin.

(b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin.

* * * *

FHA § 805, 42 U.S.C. § 3605, provides in pertinent part:

Discrimination in residential real estate-related transactions

(a) In general

It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, handicap, familial status, or national origin.

(b) "Residential real estate-related transaction" defined

As used in this section, the term "residential real estate-related transaction" means any of the following:

(1) The making or purchasing of loans or providing other financial assistance—

(A) for purchasing, constructing, improving, repairing, or maintaining a dwelling; or

(B) secured by residential real estate.

(2) The selling, brokering, or appraising of residential real property.

* * * *

FHA § 810, 42 U.S.C. § 3610, provides in pertinent part:

Administrative enforcement; preliminary matters

(a) Complaints and answers

(1) (A) (i) An aggrieved person may, not later than one year after an alleged discriminatory housing practice has occurred or terminated, file a complaint with the Secretary alleging such discriminatory housing practice. The Secretary, on the Secretary's own initiative, may also file such a complaint.

* * * *

(g) Reasonable cause determination and effect

* * * *

(2) (A) If the Secretary determines that reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the Secretary shall, except as provided in subparagraph (C), immediately issue a charge on behalf of the aggrieved person, for further proceedings under section 3612 of this title.

* * * *

FHA § 812, 42 U.S.C. § 3612, provides in pertinent part:

Enforcement by Secretary

(a) Election of judicial determination

When a charge is filed under section 3610 of this title, a complainant, a respondent, or an aggrieved person on whose behalf the complaint was filed, may elect to have the claims asserted in that charge decided in a civil action under subsection (*o*) of this section in lieu of a hearing under subsection (b) of this section. The election must be made not later than 20 days after the receipt by the electing person of service under section 3610(h) of this title or, in the case of the Secretary, not later than 20 days after such service. The person making such election shall give notice of doing so to the Secretary and to all other complainants and respondents to whom the charge relates.

(b) Administrative law judge hearing in absence of election

If an election is not made under subsection (a) of this section with respect to a charge filed under section 3610 of this title, the Secretary shall provide an opportunity for a hearing on the record with respect to a charge issued under section 3610 of this title. The Secretary shall delegate the conduct of a hearing under this section to an administrative law judge appointed under section 3105 of Title 5. The administrative law judge shall conduct the hearing at a place in the vicinity in which the discriminatory housing practice is alleged to have occurred or to be about to occur.

(c) Rights of parties

At a hearing under this section, each party may appear in person, be represented by counsel, present evidence, cross-examine witnesses, and obtain the issuance of subpoenas under section 3611 of this title. Any aggrieved person may intervene as a party in the proceeding. The Federal Rules of Evidence apply to the presentation of evidence in such hearing as they would in a civil action in a United States district court.

* * * *

(*o*) Civil action for enforcement when election is made for such civil action

(1) If an election is made under subsection (a) of this section, the Secretary shall authorize, and not later than 30 days after the election is made the Attorney General shall commence and maintain, a civil action on

behalf of the aggrieved person in a United States district court seeking relief under this subsection. Venue for such civil action shall be determined under chapter 87 of Title 28.

(2) Any aggrieved person with respect to the issues to be determined in a civil action under this subsection may intervene as of right in that civil action.

* * * *

FHA § 813, 42 U.S.C. § 3613, provides in pertinent part:

Enforcement by private persons

(a) Civil action

(1) (A) An aggrieved person may commence a civil action in an appropriate United States district court or State court not later than 2 years after the occurrence or the termination of an alleged discriminatory housing practice, or the breach of a conciliation agreement entered into under this subchapter, whichever occurs last, to obtain appropriate relief with respect to such discriminatory housing practice or breach.

* * * *

FHA § 814, 42 U.S.C. § 3614, provides in pertinent part:

Enforcement by Attorney General

(a) Pattern or practice cases

Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this subchapter, or that any group of persons has been denied any of the rights granted by this subchapter and such denial raises an issue of general public importance, the Attorney General may commence a civil action in any appropriate United States district court.

* * * *

(e) Intervention in civil actions

Upon timely application, any person may intervene in a civil action commenced by the Attorney General under subsection (a) or (b) of this section which involves an alleged discriminatory housing practice with respect to which such person is an aggrieved person or a conciliation agreement to which such person is a party. The court may grant such appropriate relief to any such intervening party as is authorized to be granted to a plaintiff in a civil action under section 3613 of this title.

* * * *

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No. 15-1112

IN THE

Supreme Court of the United States

WELLS FARGO & CO. and WELLS FARGO BANK, N.A.,
Petitioners,

v.

CITY OF MIAMI, FLORIDA,
Respondent.

On Writ of Certiorari to the
United States Court of Appeals
for the Eleventh Circuit

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QUESTIONS PRESENTED

1. Whether the term "aggrieved person" in the Fair Housing Act imposes a zone-of-interest requirement more stringent than the case or controversy requirements of Article III, and whether the City falls within the zone of interests when the City alleges it was injured by discriminatory lending practices in violation of the FHA.

2. Whether widespread violations of the Fair Housing Act that directly and foreseeably harm the City's interests in fair housing and result in other economic harms to the City satisfy the Act's proximate cause requirements.

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BRIEF FOR RESPONDENTS

INTRODUCTION

Although the Fair Housing Act ("FHA"), 42 U.S.C. § 3601 *et seq.*, is nearly a half century old, discrimination and segregation in housing remain serious problems throughout the United States. *Tex. Dep't of Hous. and Cmty. Affairs v. Inclusive Cmtys. Project, Inc.*, 135 S. Ct. 2507, 2515 (2015). As Congress recognized in enacting the FHA and as countless studies have shown since, discriminatory lending practices have contributed significantly to segregation and blight in American cities. This case presents the question of whether a city can sue to stop the discriminatory lending practices of banks. Because a city is injured in numerous ways by such discrimination, it should be deemed "aggrieved" within the meaning of the FHA and allowed to sue.

The suggestion that this unit of government is without the authority to pursue fair housing in the courts is not supported by the history and purpose of the FHA or this Court's jurisprudence. The state of America's cities and the economic and social challenges they faced from a volatile racial divide impelled Congress to enact the FHA in the first place. To address that urban crisis, Congress authorized a wide range of potential plaintiffs, public and private, to vindicate the anti-discrimination principles advanced by the FHA and later expanded that reach in 1988.

It is particularly important that cities be part of the solution, as urban centers are where the impact

of systemic housing discrimination is most acutely felt. Cities across the country are engaged in combatting discrimination, resolving complaints, and remediating neighborhoods. When housing discrimination occurs on a widespread basis within a city, it diminishes tax revenues while demanding disproportionate city resources, diverting law enforcement, fire department, and building and safety efforts, and endangering the entire community.

Permitting cities to vindicate their important rights under the FHA will not expand the scope of parties eligible to pursue such claims to include dry cleaners, bowling alleys, and hardware stores. Rather, the simple retort is that only parties with an interest in fair housing, such as the City of Miami, have standing to vindicate their rights. Clearly, a bowling alley is not similarly situated to a municipality, and the relief sought by Miami will not result in an expansion of liability under the FHA beyond the bounds authorized by Congress.

Since *Gladstone, Realtors v. Village of Bellwood*, 441 U.S. 91, 98 (1979), upheld municipal standing to pursue claims like Miami's, cities have taken wrongdoers to court, though infrequently. When it amended the FHA in 1988, Congress did not merely acquiesce in *Gladstone*'s holding that FHA standing is as broad as Article III permits, but explicitly endorsed it. In the all too few instances where cities or counties have exercised that authority, sometimes with Justice Department assistance, progress was made in the battle against housing discrimination. Few municipalities will have the wherewithal, endurance, and political willpower to

undertake the arduous task of a lawsuit against one of its most prominent corporate citizens.

In the end, Miami's lawsuit against the Banks fits squarely within the FHA's purpose of providing "for fair housing throughout the United States," 42 U.S.C. § 3601. In a case like this one, involving allegations of intentional discrimination, significant evidence of disparate impact, and injunctive and declaratory relief, the FHA would be robbed of its force if the unit of government most closely and directly affected is denied standing to bring an action. The lower court's decision should be affirmed.

STATEMENT OF THE CASE

A. Miami files a Complaint.

On December 13, 2013, Plaintiff-Respondent City of Miami ("City") filed a detailed, 63-page Complaint (*see* J.A. 266-349), against Wells Fargo & Co. and Wells Fargo Bank, N.A. (collectively, "Bank"), alleging that it had violated the FHA by engaging in discriminatory mortgage lending practices that resulted in a disproportionate and excessive number of defaults by minority homebuyers and resulting in significant, direct, and continuing financial harm to the City. The discriminatory lending practices disproportionately "plac[ed] vulnerable, underserved [minority] borrowers in loans they cannot afford." Then, as the City alleged, "when a minority borrower who previously received a predatory loan sought to refinance the loan, . . . [the Banks] refused to extend credit at all, or on terms equal to those offered when refinancing similar loans issued to white borrowers." *Id.* at 269-71, 354-56.

As the Eleventh Circuit correctly characterized the allegations, the City alleged "the bank targeted black and Latino customers in Miami for predatory loans that carried more risk, steeper fees, and higher costs than those offered to identically situated white customers, and created internal incentive structures that encouraged employees to provide these types of loans." Pet. App. 21a.

The Complaint further alleged that a regression analysis of available data demonstrated that African-American borrowers were 4.321 times more likely to receive a discriminatory loan than a white borrower with similar underwriting and borrower characteristics. Latino borrowers were 1.576 times more likely to receive such loans. Even an African-American borrower with a FICO score greater than 660 was 2.572 times more likely to receive a discriminatory loan than a white borrower with similar underwriting and borrower characteristics, and a Latino borrower with an above-660 score was 1.875 times more likely to receive such loans. J.A. 323-24. These results are consistent with the allegations that 11.1% of loans made to Miami's minority borrowers were high-cost, whereas only 3.2% of loans to white borrowers were high-cost. *Id.* at 319-20, 405-06.

The Complaint also alleged facts that these loan practices foreseeably resulted in foreclosures, did so more rapidly for minority borrowers than whites, and that the foreclosures were caused by the discriminatorily unfavorable loan terms. For example, a discriminatory loan in Miami was 5.494 times more likely to result in foreclosure than a non-

discriminatory loan. *Id.* at 333. Additionally, a discriminatory loan to an African-American borrower in Miami was 13.324 times more likely to result in foreclosure than a non-discriminatory loan to a white borrower with similar risk characteristics, and a discriminatory loan to a Latino borrower was 17.341 times more likely to result in foreclosure than a loan in a predominantly non-discriminatory loan to a white borrower with similar risk characteristics. *Id.* Moreover, the Complaint alleged that a loan made to a borrower residing in a predominantly minority neighborhood in Miami was 6.975 times more likely to result in foreclosure than a loan in a non-minority neighborhood. *Id.* at 272.

As a result of these practices, the Complaint alleged that property values of the homes vacated and of other homes in the same neighborhoods as newly vacated homes diminished and caused a loss of tax revenues to the City. *Id.* at 345. Moreover, the Complaint alleged that a Hedonic regression analysis could calculate the City's loss attributable to the Bank's discriminatory lending practices and separate out other potential causes. *Id.* at 336-38. In addition, the City suffered other economic damages beyond lost tax revenues because it has had to expend additional monies on municipal services to address problems of vagrancy, criminal activity, and threats to the public health and safety arising at these properties because of their foreclosed status, as well as to remediate newly blighted neighborhoods. *Id.* at 338-41. To make concrete any generalized allegations, the City preliminarily identified 999 discriminatory loans issued by the Bank between 2004-2012 that resulted in foreclosure and, in the Complaint, provided sample

addresses to ten homes. *Id.* at 341-42. In addition to monetary damages, Miami further sought injunctive and declaratory relief. *Id.* at 347.

B. The District Court dismisses the Complaint with prejudice.

On July 9, 2014, the District Court granted the Bank's motion to dismiss with prejudice with respect to the allegations based on the FHA, while dismissing a second cause of action premised on unjust enrichment without prejudice. Pet. App. 81a-99a. The District Court concluded that Miami lacked standing based upon its reading of *Nasser v. City of Homewood*, 671 F.2d 432 (11th Cir. 1982). Pet. App. 90a-93a. The District Court further concluded that "proximate causation for standing" was not adequately alleged because Miami failed to isolate the Bank's practices as the sole cause of the City's injuries. *Id.* at 93a-94a. Finally, the District Court concluded that Miami's claims were time-barred, but acknowledged that an amendment could cure the court's concerns. *Id.* at 95a-96a.

On July 21, 2014, the City timely moved for reconsideration, proffering a proposed First Amended Complaint (J.A. 350-434) to make more explicit a number of allegations merely implicit in the original Complaint, particularly focusing upon Miami's interest in fair housing and an integrated society. J.A. 351, 362-63, 416-17. The proposed Complaint further provided additional details deemed lacking by the Court with respect to its unjust enrichment claim. *Id.* at 429-30.

On September 9, 2014, the District Court denied the motion for reconsideration, holding that Plaintiff's arguments were "ones that the Plaintiff already made or that it could have, but chose not to" and do not "cause the Court to reconsider its prior Order." Pet. App. 78a. The Court did offer Miami additional time to file a new complaint based on the claim for unjust enrichment alone. *Id.* at 80a. The City, choosing not to split its causes of action, instead filed a notice of appeal on October 7, 2014.

C. The Eleventh Circuit reverses.

The Eleventh Circuit reversed the District Court in a unanimous opinion. First, it held "the phrase 'aggrieved person' in the FHA extends as broadly as is constitutionally permissible under Article III," relying on this Court's identical holdings in *Trafficante v. Metropolitan Life Insurance Co.*, 409 U.S. 205, 209 (1972), *Gladstone*, 441 U.S. at 98, and *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 372 (1982). Pet. App. 45a. It recognized that the more recent Title VII decision in *Thompson v. North American Stainless, LP*, 131 S. Ct. 863 (2011), "gestured in the direction of rejecting that interpretation, [but] a gesture is not enough." *Id.* It noted that "*Thompson* itself was a Title VII case, not a Fair Housing Act case," and that *Thompson* only stated "that any suggestion drawn from the FHA cases that Title VII's cause of action is similarly broad was 'ill-considered' dictum." Pet. App. 45a (citing *Thompson*, 562 U.S. at 176).

The Eleventh Circuit rejected the District Court's application of its decision in *Nasser*, 671 F.2d

432, where the plaintiff alleged no FHA violation. Instead, it held that "the City claims to have suffered an economic injury resulting from a racially discriminatory housing policy," which was sufficient to state a claim under the FHA. Pet. App. 47a. It concluded that the zone of interest analysis applicable to the FHA "encompasses the City's allegations in this case." *Id.*

It further held that the City's allegations were sufficient to meet the FHA's proximate cause requirement, stating that the Complaint alleged "the Bank's discriminatory lending caused property owned by minorities to enter premature foreclosure, costing the City tax revenue and municipal expenditures." *Id.* at 56a. It added, "[a]lthough there are several links in that causal chain, none are unforeseeable." *Id.* The court further noted that the complaint "alleges that the Bank had access to analytical tools as well as published reports drawing the link between predatory lending practices 'and their attendant harm,' such as premature foreclosure and the resulting costs to the City, including, most notably, a reduction in property tax revenues." *Id.* at 55a. It rejected the District Court's requirement that proximate cause be isolated, as though it were the sole cause. *Id.* at 55a-58a. As to the other issues raised by the Bank or the District Court's opinion, the Eleventh Circuit remanded the case to allow the City to file an amended complaint.

D. Return to the District Court.

Upon remand, the City filed a Second Amended Complaint (ECF No. 61), which the District Court dismissed without prejudice on March 17, 2016 on

statute of limitations grounds. ECF No. 77. The City filed a Third Amended Complaint on April 29, 2016. ECF No. 80. The Bank filed a motion to dismiss that pleading on May 24, 2016 (ECF No. 102), but proceedings were stayed pending this Court's decision. ECF No. 103.

SUMMARY OF ARGUMENT

The City of Miami filed intentional and disparate impact claims that Wells Fargo issued undesirable mortgages to African-American and Latino borrowers. The Bank knew that the loans were likely to end in default. If that occurred, it was easily foreseeable that the City would be harmed.

The Bank asks this Court to reverse the Eleventh Circuit's well-reasoned decision and dismiss these claims, arguing that the City lacks an interest in non-discrimination or fair housing and that its injuries are unconnected to those harms. However, a fair reading of the City's Complaint makes plain that the City has a strong and inherent interest in the benefits of an integrated community and was harmed in its fair housing efforts, while suffering further injuries in the form of lowered property tax revenues and remediation costs. The City's claims and alleged injuries are similar to those sustained in 1979 in *Gladstone*.

The FHA was enacted to eradicate housing discrimination with a special emphasis on the problems discrimination causes for cities. When the Act was amended in 1988, Congress strengthened the Act to assure greater enforcement efforts through litigation, both public and private. In doing so,

Congress explicitly endorsed the "broad holdings" of this Court's jurisprudence, which established that FHA standing reached as far as Article III permits. This broad reach is consistent with the FHA's purpose "to provide, within constitutional limitations, for fair housing throughout the United States." 42 U.S.C. § 3601. No other civil rights law embraces that reach.

Recent jurisprudence concerning other civil rights statutes do not support narrowing the scope of FHA standing and explicitly approve the approach and implicitly approve the result in *Gladstone*, which upheld municipal standing for claims and asserted injuries similar to Miami's. Moreover, the strong congressional intent to support direct and indirect claims under the FHA validates Miami's cause of action.

Miami also meets the proximate cause requirements inherent in an FHA action. It was directly harmed in its fair housing efforts by the Bank's issuance of discriminatory loans, much as the non-profit organization afforded standing in *Havens*. A plaintiff must only demonstrate proximate cause substantial enough and close enough to the harm to effectuate the law's purposes. That benchmark was met by Miami's pleadings. Using regression analysis of the discriminatory loans identified, Miami alleged it was able to separate out the effect of other potential causes so that its claims were limited to discriminatory loans and the harms they caused. Moreover, the sophisticated analytical tools used by banks reveal which loans will likely enter foreclosure even before they are issued, and countless studies demonstrate foreclosures' impact on cities.

It would be a remarkable concept to enjoin cities from enforcing one of the nation's most important anti-discrimination statutes when the effects of housing discrimination are most acutely experienced in the Nation's urban centers. Here, the City's interest and the harms visited upon it by discrimination provide the requisite standing. Miami should have its day in court, because its claims fit squarely within the law's zone of interests and causal requirements.

ARGUMENT

I. The City Falls Squarely Within the Zone of Interests Covered by the FHA.

A. The Zone of Interest test focuses on the scope of the statute and provides no barrier to standing when an arguable interest exists.

To be within the zone of interests protected or regulated by a statute, a plaintiff must assert an interest recognized by the underlying statute. *Ass'n of Data Processing Serv. Orgs., Inc. v. Camp*, 397 U.S. 150, 153 (1970). The cognizable interests can be as diverse as "'aesthetic, conservational, and recreational'" as well as "economic values." *Id.* at 153-54. This Court has never retreated from this broadly inclusive approach. The zone-of-interest test "is not meant to be especially demanding." *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, 132 S. Ct. 2199, 2210 (2012) (quoting *Clarke v. Sec. Indus. Ass'n*, 479 U.S. 388, 399 (1987)). In fact, this Court has noted "we have always conspicuously included the word 'arguably' in the test to indicate

that the benefit of any doubt goes to the plaintiff." *Id.* Thus, the "test forecloses suit only when a plaintiff's 'interests are so marginally related to or inconsistent with the purposes implicit in the statute that it cannot reasonably be assumed that Congress intended to permit the suit.'" *Id.* (quoting *Clarke*, 479 U.S. at 399).

To make the "zone" determination, a court applies Congress's "evident intent" and emphatically does "not require any 'indication of congressional purpose to benefit the would-be plaintiff.'" *Id.* (quoting *Clarke*, 479 U.S. at 399-400). Congress may make the relevant zone of interests as broad or as narrow as it chooses, as long as it confers standing in accordance with Article III's "case or controversy" requirement. *Warth v. Seldin*, 422 U.S. 490, 501 (1975). *See also Bennett v. Spear*, 520 U.S. 154, 164-65 (1997) (authorizing standing under the Endangered Species Act to all who allege an interest in the animals' preservation).[1] The test is statute-specific and uses "traditional tools of statutory interpretation [to determine] whether a legislatively conferred cause of action encompasses a particular plaintiff's claim." *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 134 S. Ct. 1377, 1389, 1387 (2014).[2]

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[1] Justice Scalia's opinion for the Court in *Bennett* "follow[ed] *a fortiori* from our decision in *Trafficante v. Metropolitan Life Ins. Co.*, 409 U.S. 205, 93 S.Ct. 364, 34 L.Ed.2d 415 (1972), which held that standing [under the FHA] was expanded to the full extent permitted under Article III." 520 U.S. at 165.

[2] Because the zone test is referred to as "statutory standing," *Lexmark*, 134 S. Ct. at 1388 n.4, the Bank's invocation of *Air Couriers Conference of America v. American Postal Workers*

B. Congressional intent, reflected by the FHA's text, legislative history, and case law supports standing for Miami.

1. The conditions that brought the FHA into being, reflected in its text, support standing.

To "address[] the denial of housing opportunities," the FHA prohibits "[d]iscriminatory housing practices," including discrimination in the sales, rentals, and real estate transactions. 42 U.S.C. §§ 3602(f), 3606. Congress expressed the law's unique and enormous breadth in its very first section, declaring its purpose: "to provide, within constitutional limitations, for fair housing throughout

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Union, 498 U.S. 517 (1991) and *Block v. Community Nutrition Institute*, 467 U.S. 340 (1984), *see* WF Br. 30-31, is unavailing. While both cases involved challenges to agency action under the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 *et seq.*, the standing inquiry in APA cases is informed by the statute that granted the agency authority to promulgate the rules. Neither authority-granting statute used the adversely affected standard in the FHA, even though the APA does. For example, in *Block*, this Court reviewed the Agricultural Adjustment Act, 7 U.S.C. § 601 *et seq.*, and denied standing because Congress intended to limit eligible plaintiffs to those entitled "to participate in the development of market orders" and because consumer lawsuits "would severely disrupt this complex and delicate administrative scheme." 467 U.S. at 346, 348. Similarly, in *Air Couriers*, the zone-of-interest inquiry focused on the Private Express Statutes, which give the U.S. Postal Service a monopoly over letter carrying. 498 U.S. at 519. Neither statute is comparable to the FHA, which encourages both public and private lawsuits to vindicate its purpose, and neither precedent provides helpful guidance.

the United States." 42 U.S.C. § 3601. No other civil rights law embraces that reach.

Congress enacted the FHA, 42 U.S.C. § 3601 *et seq.*, in response to an urban crisis in which segregated and deteriorating inner cities were centers of unrest, crime, and turmoil. Residential segregation and unequal housing and economic conditions in the inner cities produced the social unrest afflicting the Nation's cities, according to the federal commission established to investigate the conditions. *Inclusive Cmtys.*, 135 S. Ct. at 2516 (citing *Report of the Nat'l Advisory Comm'n on Civil Disorders* 91 (1968) ("Kerner Comm'n Report")). Urban riots, following the assassination of Dr. Martin Luther King, Jr., provided the backdrop to the FHA's enactment. *Id.*

The FHA's legislative history reflects Congress's intention to broaden the Act's scope beyond individual enforcement by individual victims of discrimination. One of the principal sponsors of the Act, Senator Mondale, put the proposed legislation into the context the Kerner Commission described. Confronting "fantastic pressures," the nation's cities suffered from a "[d]eclining tax base, poor sanitation, loss of jobs, inadequate educational opportunity and urban squalor" for which "[f]air housing legislation is a basic keystone to any solution of our present urban crisis." 114 Cong. Rec. 2274 (1968). Senator Mondale understood that tolerance of continued housing discrimination would lead to the "destruction of our urban centers by loss of jobs and business to the suburbs, a declining tax base, and the ruin brought on by absentee ownership of property." 114 Cong. Rec. 2993 (1968) (statement of Sen. Mondale). His

principal co-sponsor, Senator Brooke, called unequal housing an "economic problem affecting all the urban centers of America" and one that will render "cities . . . less and less able to cope with their problems, financially and in every other way." 114 Cong. Rec. 2987, 2988 (1968) (statement of Sen. Brooke). Plainly, the FHA's sponsors were focused on the impact of unequal housing on cities and its ripple effects on municipal finances and services.

2. Jurisprudence under the FHA supports standing.

In case after case, this Court has broadly interpreted who has standing to sue under the FHA. The FHA is "a comprehensive open housing law." *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 413 (1968). Unlike other civil rights statutes, the FHA's "'potential for effectiveness . . is much greater . . . because of the sanctions and the remedies that it provides.'" *Id.* at 415 n.19. To achieve its capacious purpose of providing for fair housing throughout the nation to the extent that the Constitution permits and to honor its "broad and inclusive" language, this Court decreed that the FHA must be given "generous construction" in order to carry out a "policy that Congress considered to be of the highest priority." *Trafficante*, 409 U.S. at 211-12. Recently, referencing the statute's first provision, this Court declared that the FHA's "central purpose" is to "eradicate discriminatory practices within a sector of our Nation's economy." *Inclusive Cmtys.*, 135 S. Ct. at 2521. *See also* H.R. Rep. No. 100-711, at 15, 100th Cong., 2d Sess. 1988 (1988) (hereinafter "H.R. Report") (FHA "provides a clear national policy

against discrimination in housing"). Consistent with that breadth and goal, the FHA provides for both private and governmental rights of action. *See* 42 U.S.C. §§ 3612-14.

This Court's broad interpretation of the FHA's standing requirements began with *Trafficante*. In that case, this Court found that standing was available to two tenants who asserted an injury from the impairment of the social benefits of integration, business and professional opportunities, and other advantages because an apartment building owner had discriminated against prospective tenants other than themselves. *Trafficante*, 409 U.S. at 206-08. Cities share the same interests asserted by the tenants.

Trafficante rejected the argument that the FHA's zone of interests limited lawsuits to "persons who are the objects of discriminatory housing practices." *Id.* at 208. Instead, it held that Congress intended standing under the Act to be as broad as is permitted by Article III of the Constitution. *Id.* at 209. It noted that "proponents of the legislation emphasized that those who were not the direct objects of discrimination had an interest in ensuring fair housing, as they too suffered," an interpretation consistent with that of the Department of Housing and Urban Development ("HUD"). *Id.* at 210 (footnote citation omitted). The Court also cited the observation of Senator Javits that housing discrimination harms not only the "'victim of discriminatory housing practices,'" but "'the whole community.'" *Id.* at 211 (citing 114 Cong. Rec. 2706 (1968)). Moreover, the Court accepted the representations of the United States that FHA enforcement is dependent on private

attorneys general, as the government had limited resources to undertake such actions, even when authorized, *id.* at 211, thereby placing enormous importance on the availability of private litigation by third parties.

The Bank argues that *Trafficante*'s broad holding on the requirements for FHA standing is permissible because it was limited to the context of residents of an apartment complex, relying on qualifying language that this Court used. WF Br. 20. *See Trafficante*, 409 U.S. at 209 ("insofar as tenants of the same housing unit that is charged with discrimination are concerned"). While that language reflected this Court's solicitude of the injury that arises from discrimination that injures others by depriving them of the benefits of interracial association, it is best understood to mean that another person in that neighborhood, who was not a tenant in that building complex, could not make the same claim based on the same refusal to rent to a third party. The level of discrimination, in other words, could not radiate out further than the apartment complex at issue because of the nature of the discriminatory act.

Trafficante's qualifying language did not deter this Court from recognizing that wider FHA violations could create harms affecting a greater geographic area. In *Gladstone*, 441 U.S. 91, the Court made clear that the Article III basis for standing was not limited to tenants of a large apartment complex, but could also encompass a 12-by-13 block residential neighborhood. *Id.* at 113. The relevant geographic area, the Court held, was not controlling because of the scope of the violation. *Id. Gladstone* thus rejects

the Bank's suggested limitation on *Trafficante*'s holding.

While Trafficante sued on the basis of then § 810, in *Gladstone*, the Village of Bellwood went to court for violations of the FHA by a realty firm under § 812.[3] In *Gladstone*, 441 U.S. 91, Bellwood's barebones complaint alleged it had

> "been injured by having [its] housing market . . wrongfully and illegally manipulated to the economic and social detriment of the citizens of [the] village," and that the individual respondents "have been denied their right to select housing without regard to race and have been deprived of the social and professional benefits of living in an integrated society."

Id. at 95 (ellipses in original).

This Court, examining legislative history, rejected the argument that differences between the two provisions authorizing lawsuits, § 810 (available to a "person aggrieved") and § 812 (without a plaintiff definition) foreclosed lawsuits by indirect victims of discrimination. Instead, it held "that §§ 810 and 812 are available to precisely the same class of plaintiffs." *Id.* at 105. Turning to Bellwood's complaint, the Court recognized that a "significant reduction in property values directly injures a municipality by diminishing

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[3] Section 812 lacked limitations on plaintiffs, as long as they sought to enforce the FHA. *Gladstone*, 441 U.S. at 101.

its tax base, thus threatening its ability to bear the costs of local government and to provide services," as well as "rob[s] Bellwood of its racial balance and stability, the village has standing to challenge the legality of that conduct." *Id.* at 110-11.

Adhering to the holding in *Trafficante* that the FHA's "within constitutional limitations" mandate conferred standing as broadly as Article III permits, *see* 409 U.S. at 209, *Gladstone* held that a municipality has standing to pursue injuries to its tax base and the resulting effect on its budget, due to discriminatory housing practices. Significantly, this Court declared:

> As long as the plaintiff suffers actual injury as a result of the defendant's conduct, he is permitted to prove that the rights of another were infringed. The central issue at this stage of the proceedings is not who possesses the legal rights protected by § 804, but whether respondents were genuinely injured by conduct that violates someone's § 804 rights, and thus are entitled to seek redress of that harm under § 812.

Id. at 103.

Notably, this Court recently endorsed the standing analysis employed in *Gladstone* as wholly compatible with the zone-of-interest test. *Thompson*, 131 S. Ct. at 869. Thus, Miami's claim, indistinguishable from Bellwood's, also meets this Court's recent articulation of the applicable standard,

whether that standard is Article III standing or something more constrained. *Thompson*'s approval of Bellwood's standing, may "all but decide[] this case," as the Bank contends, WF Br. 12, but, if it does, it decides the issue in favor of Miami. The City submits that its original Complaint fairly establishes that the City's Bellwood-like injuries resulted from the Bank's racially imbalanced mortgage practices. The FHA was intended to address the very combination of interests and injuries Miami has suffered.[4]

Havens reaffirmed the Article III reach of FHA standing and afforded standing to a non-profit organization that operated a "housing counseling service, and . . . investigat[ed] and referr[ed] complaints concerning housing discrimination." 455 U.S. at 372, 368. The organizational plaintiff claimed that the discriminatory steering practices "had frustrated the organization's counseling and referral services, with a consequent drain on resources," and deprived its members "of the benefits of interracial association." *Id.* at 369.

Havens stated that *Gladstone* "*held* that 'Congress intended standing under § 812 to extend to the full limits of Art. III' and that the courts accordingly lack the authority to create prudential barriers to standing in suits brought under [§ 812]." *Id.* at 372 (emphasis added) (citing *Gladstone*, 441 U.S. at 103 n.9). *See also id.* at 375-76. *Havens* then emphatically agreed: "the sole requirement for

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[4] If Miami's Complaint somehow insufficiently alleges those interests and injuries, the solution, as in *Havens*, is a remand that would "afford the plaintiffs an opportunity to make more definite the allegations of the complaint." 455 U.S. at 378.

standing to sue under § 812 is the Art. III minima of injury in fact." *Id.* at 372.

Whether the source of the injury is direct or indirect, such as claims of injury based on "an adverse impact on [a] neighborhood" resulting from discriminatory housing practices, is "of little significance in deciding whether a plaintiff has standing to sue under § 812 of the Fair Housing Act." *Id.* at 375. As a result, *Havens* held that the impairment of the organization's ability to provide counseling and referral services and the "consequent drain on the organization's resources" constituted a "concrete and demonstrable injury" sufficient to confer standing. Miami's injuries are indistinguishable.

The Bank asserts that Miami lacks an "injury to [its] interest in non-discrimination. WF Br. 28. It denies Miami has the requisite noneconomic interest in encouraging open housing and claims its injuries "do[] *not* depend on the discriminatory nature of the challenged conduct." WF Br. 32 (emphasis in original). Yet, a fair reading of the City's Complaint and, even more so, a fair reading of the City's proffered First Amended Complaint shows that Miami's injuries are no less concrete and demonstrable and unquestionably tied to the discriminatory misconduct. After all, courts "must construe the complaint in favor of the complaining party," *Warth*, 422 U.S. at 501, and "take the allegations of the complaint at face value," *Cal. Motor Transp. Co. v. Trucking Unlimited*, 404 U.S. 508, 515 (1972).

The discriminatory mortgage lending practices at issue here, giving more expensive and riskier loans to minority borrowers than non-minority borrowers, directly harm the City's fair housing efforts and deprive it of the benefits of an integrated community by blighting neighborhoods and discouraging an influx of diverse residents. It also robs properties and neighborhoods of their value, diminishes tax revenues, and requires extra police, fire, and safety attention, draining the City's resources. The FHA was intended to end that cycle of urban blight, and Miami's lawsuit plainly furthers those interests.

If these harms and their close connection to the alleged discriminatory conduct were not apparent from the whole of the original Complaint and its detailed factual allegations in the original Complaint, it was made more explicit in the proffered First Amended Complaint, J.A. 350-434. If the City were afforded the opportunity for discovery, the City could fine tune its claims even more.

3. *The 1988 amendments to the FHA reinforce standing under the Act.*

The Bank treats the legislative history of the 1988 FHA amendments, Fair Housing Amendments Act of 1988, Pub. L. No. 100-430, 102 Stat. 1619 (Sept. 13, 1988) (codified as amended at 42 U.S.C. §§ 3601-3619), as limited to ratifying *holdings* in *Trafficante*, *Gladstone*, and *Havens*, and argues that the decisions' declarations on the scope of the FHA's zone of interests constitutes mere *dicta*. *See* WF Br. 24-27. If the cases' uniform declarations that standing under the FHA reaches as far as Article III permits

constitute holdings, rather than *dicta*, the Bank asks this Court to overrule them. WF. Br. 24 n.6. Of course, "*stare decisis* carries enhanced force when a decision . . . interprets a statute," because "critics of our ruling can take their objections across the street, and Congress can correct any mistake it sees." *Kimble v. Marvel Entm't, LLC*, 135 S. Ct. 2401, 2409 (2015). Even so, the City submits that the cases hold that FHA standing embraces the full authority of Article III and accurately reflect congressional intent.

The primary motivation for the 1988 amendments was a bipartisan consensus that stronger enforcement was needed, including through litigation. As the amendments' sponsor, Senator Kennedy, explained upon introduction of the final bill, the FHA was a "toothless tiger" that "proved to be an empty promise because the legislation lacked an effective enforcement mechanism." 134 Cong. Rec. S10454 (1988) (statement of Sen. Kennedy). That criticism is reflected as well in the House Report. H.R. Report 13 (FHA "fails to provide an effective enforcement system to make [its] promise a reality"). The report added that the FHA's limited means for enforcing the law" constitutes "the primary weakness in existing law." *Id.* Even while creating an administrative enforcement system, the amendments were intended "to remov[e] barriers to the use of court enforcement by private litigants and the Department of Justice." *Id.*

The new amendments recognized that "private enforcement has achieved some success," but also acknowledged that enforcement was "restricted by the limited financial resources of litigants and the bar,

and by disincentives in the law itself." *Id.* at 15. To encourage more private litigation, Congress "strengthen[ed] the private enforcement section by expanding the statute of limitations, removing the limitation on punitive damages [thereby boosting the private attorney general status of private litigants], and bringing attorney's fees language in title VIII closer to the model used in other civil rights laws [so that it was no longer limited to those who could not afford counsel]." *Id.* at 16.

The amendments also authorized the "Attorney General to intervene in private cases of general public importance" and "seek substantial civil monetary penalties against violators."[5] *Id.*

When it turned to the definition of "aggrieved person," which the amendments made applicable to all private litigation, Congress acknowledged this Court's decisions in *Gladstone* and *Havens* and the holding that both avenues of litigation for private litigation were identical. H.R. Report 17. It stated that the "bill adopts as its definition language similar to that contained in Section 810 of existing law, as modified *to reaffirm the broad holdings of these cases.*" *Id.* at 17 (emphasis added).

Wells Fargo argues that the words "broad holdings" essentially restrict Congress's endorsement

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[5] Congress had long been disappointed with the level of Justice Department pursuit of fair housing violations. Between the passage of the FHA in 1968 and 1980, the Justice Department brought only about 300 lawsuits. *See* Fair Housing Amendments Act of 1980, H.R. Rep. No. 96-865, 96th Cong., 2d Sess. 4 (1980).

to the results of those cases and not to their treatment of "aggrieved person." WF Br. 24-26. However, "[w]hen an opinion issues for the Court, it is not only the result but also those portions of the opinion necessary to that result by which we are bound." *Seminole Tribe of Fla. v. Fla.*, 517 U.S. 44, 67 (1996).

Yet, if there was any broad holding that Congress embraced in these cases, it had to be the breadth of standing accorded private plaintiffs. Congress could not look at *Gladstone* and fail to understand that municipalities had standing to pursue lost tax revenues and other expenses that flowed from the consequences of discriminatory housing practices. That understanding reflects the result *and the holding* in the case.

Motivated as it was to expand enforcement of the FHA through litigation, Congress could not look at *Havens* and fail to understand that organizations involved in promoting fair housing had standing to pursue lost resources that flowed from the consequences of discriminatory housing practices. That understanding, too, reflects the result and the holding in the case. In addition, it makes no sense that Congress would have read these cases, which characterize the relevant jurisprudence as *holding* that Congress intended standing to reach as far as Article III permits, *see Havens*, 455 U.S. at 372,[6] and treat that characterization as erroneous. Indeed, if

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[6] In fact, this Court has characterized the *Trafficante* statement that standing reaches as far as Article III permits as a holding in an opinion written by the author of *Thompson*. *See Bennett*, 520 U.S. at 165 (Scalia, J.).

anything in those opinions was likely to jump out at the Congress and cry for correction if erroneous, it would have been the description of FHA standing being coextensive with Article III.

Moreover, Senator Hatch offered but Congress did not adopt a narrowed definition of "aggrieved person" that would have made the law closer to what the Bank now asks of the Court. The Senator's bill would have defined "aggrieved person" as a person whose bona fide attempt to buy, sell, lease, or finance a dwelling has been denied on a discriminatory basis, thereby limiting plaintiffs to those who were the direct victims of discrimination. Equal Access to Housing Act of 1987, S. 867, 100th Cong. (1987). The failure of that bill further confirms that Congress did not impair the approach to standing that this Court utilized in *Trafficante*, *Gladstone*, and *Havens*, even though the issue was plainly raised in that body.

This Court has held that "[w]hen Congress amend[s an Act] without altering the text of [the relevant provision], it implicitly adopt[s this Court's] construction" of that provision. *Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 244 n.11 (2009). *See also Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167, 176 (2005) (finding it "not only appropriate but also realistic to presume that Congress was thoroughly familiar with [earlier relevant precedent] and . . expected its enactment . to be interpreted in conformity with it.") (internal quotation marks and alterations omitted); *Lorillard v. Pons*, 434 U.S. 575, 580 (1978) (noting that "Congress is presumed to be aware of an administrative or judicial interpretation of a statute

and to adopt that interpretation when it re-enacts a statute without change").

In *Inclusive Communities*, this Court found Congress' decision to amend the FHA in 1988 against the backdrop of existing precedent was "convincing support that Congress accepted and ratified" these holdings. 135 S. Ct. at 2520. Here, Congress explicitly reaffirmed this Court's prior treatment of aggrieved person in *Gladstone* and *Havens* when approving the 1988 Amendments. The uniformity of treatment in this Court's decisions on FHA standing made it settled law.

C. *Thompson*'s reading of Title VII does not control construction of the FHA.

The Bank contends that *Thompson* "all but decides this case." WF Br. 12. It does so largely on a *presumption* that the use of "aggrieved" in Title VII, as defined in *Thompson*, 562 U.S. 170, equally applies to the term's use in the FHA. Even so, when the Bank seeks to avoid the broad description of standing under the FHA contained in *Bennett*, 520 U.S. at 165, it tells this Court *Bennett* "was a case about the [Endangered Species Act], not the FHA, so whatever that opinion said about the FHA was merely dictum." WF Br. 23. If that later statement is correct, then because *Thompson* was about Title VII, not the FHA, whatever it said about the FHA was also merely dictum.

Title VII's authorizes "a person claiming to be aggrieved" by discriminatory employment actions to file charges with the Equal Employment Opportunity Commission ("EEOC") for conciliation purposes and

then federal court if the EEOC declines to sue the employer. 42 U.S.C. § 2000e-5(b), (f)(1).

Thompson's definition of "aggrieved person" for Title VII does not control interpretation of similar language in the FHA. Though both are civil rights statutes, Title VII differs from the FHA in a number of significant ways. For example, Title VII does not have purpose language like that of the FHA, indicating Congress's intent to prohibit the subject discrimination "within constitutional limitations." For another, while Title VII hinges heavily on the motive behind an adverse employment decision, *see* 42 U.S.C. §§ 2000e-2(a), (m), the FHA focuses on results. *Inclusive Cmtys.*, 135 S. Ct. at 2118-19, 2525. Perhaps most importantly, the FHA specifically defines "aggrieved person," 41 U.S.C. § 3602(i), whereas Title VII does not.

Moreover, this Court has made clear that "[w]e have several times affirmed that identical language may convey varying content when used in different statutes, sometimes even in different provisions of the same statute." *Yates v. United States*, 135 S. Ct. 1074, 1082 (2015) (providing examples). Here, precedent and legislative history support reading aggrieved person more broadly in the FHA than Title VII.

1. Thompson *did not impair* Trafficante's *interpretation of the FHA.*

To the Bank, *Thompson*'s characterization of the treatment of "aggrieved person" in *Trafficante* as "ill-considered dictum," 562 U.S. at 176, undermines any reliance upon the decision. WF Br. 13, 23. In doing

so, the Bank misreads *Thompson*, which made clear that *Trafficante*'s take on the standing requirements of Title VII constituted dictum, not its holding on the standing requirements of the FHA. *Thompson* emphasized that "it is Title VII rather than Title VIII that is before us here, and as to that we are surely not bound by the *Trafficante* dictum." 562 U.S. at 176. What was the *Trafficante* dictum? It was "dictum that the *Title VII aggrievement requirement* conferred a right to sue on all who satisfied Article III standing." *Id.* (emphasis added). In other words, the *dictum* was what *Trafficante* said about Title VII, not what it said about the FHA.

What *Trafficante* said about standing under the FHA, on the other hand, was squarely before the Court and fully ventilated. *Trafficante* called upon this Court to determine the scope of standing under the FHA, with the parties arguing about whether "aggrieved" meant any person who satisfies Article III standing, *see* Br. of Pet'r, *Trafficante v. Metro. Life Ins. Co.*, 409 U.S. 205 (1972), 1972 WL 136276, at 16 & n.10, or whether "aggrieved" meant only those directly injured by the claimed violation. Br. of Resp't, *Trafficante v. Metro. Life Ins. Co.*, 409 U.S. 205 (1972), 1972 WL 136277, at 37-39. As the Bank concedes, *Trafficante*'s decision on that issue was a holding "insofar as tenants of the same housing unit that is charged with discrimination are concerned." WF Br. 20 (quoting 409 U.S. at 209). Subsequent decisions of this Court patently established that the holding was not a ticket only available on that particular train. *See Gladstone*, 441 U.S. at 113.

Even if the reference to Article III could be treated as *dicta*, the statements about law decided by this Court that have been briefed and put in issue by the parties are entitled to precedential value. *Cf. Cent. Va. Cmty. College v. Katz*, 546 U.S. 356, 363 (2006) (suggesting that *dicta* that was fully debated is binding). This Court has followed judicial *dicta* when it is a "well-established rationale upon which the Court based the results of its earlier decisions." *Seminole Tribe*, 517 U.S. at 67. Moreover, the "principle of stare decisis directs us to adhere not only to the holdings of . . . prior cases, but also to . . explications of the governing rules of law." *Cnty. of Allegheny v. ACLU*, 492 U.S. 573, 668 (1989) (Kennedy, J., concurring and dissenting); *Sheet Metal Workers v. EEOC*, 478 U.S. 421, 490 (1986) ("Although technically *dicta*, . . an important part of the Court's rationale for the result that it reache[s] . . . is entitled to greater weight") (O'Connor, J., concurring).

In fact, even if Congress had not endorsed this Court's prior constructions of the FHA so strongly, the Court's statements—whether *dicta* or not—have "'special force,'" for "'Congress remains free to alter what we have done.'" *John R. Sand & Gravel Co. v. United States*, 552 U.S. 130, 139 (2008) (quoting *Patterson v. McLean Credit Union*, 491 U.S. 164, 172-173 (1989)). Congress's intent controls. However, ill-advised anyone might view their actions, this Court has said that it may not "limit a cause of action that Congress has created merely because 'prudence' dictates." *Lexmark Int'l, Inc.*, 134 S. Ct. at 1388.

Part of the Bank's argument is about prudence. It suggests that the FHA requirement that the

Attorney General prosecute a civil action on behalf of a private aggrieved person litigant's behalf demonstrates that the zone of interests must be narrower. WF Br. 18 (citing 42 U.S.C. §§ 3610(a), (g), 3612(a), (o)). However, no private claimant can insist on having the Attorney General bring a case. Before that happens, the HUD Secretary must find reasonable cause and authorize the lawsuit. *See* 42 U.S.C. § 3612(o). As a practical matter, the authority has rarely been exercised. Notably, lawsuits similar to Miami's brought by Baltimore and Memphis were settled as part of a case brought against Wells Fargo by the Justice Department, which alleged that the Bank had discriminated against 34,000 African-American and Hispanic borrowers during a six-year period through 2009." John L. Ropiequet, *A Curious Dichotomy: Fair Lending Litigation and Enforcement Actions Following Wal-Mart Stores, Inc. v. Dukes*, Banking & Fin. Services Pol'y Rep., at 1 (Jan. 2013).

The Bank also raises the *Thompson* hypothetical about a shareholder who sues because the company has terminated a valuable employee, which causes the stock price to plunge. WF Br. 30. The comparison to the City's position fails, however. The City has a palpable interest, for which it expends resources, to achieve fair housing. *See* J.A. 362-63. It is not comparable to an absentee shareholder.

2. Thompson's approach to "aggrieved person" would not oust Miami from court.

Thompson reaffirmed *Trafficante*'s approach to FHA standing by rejecting an "artificially narrow"

reading of "aggrieved" that would have limited plaintiffs to direct victims of discrimination, the same approach advocated here by the Bank. *Thompson*, 652 U.S. at 177. It held that such an approach "contradicts the very holding of *Trafficante*, which was that residents of an apartment complex were 'person[s] aggrieved' by discrimination against prospective tenants." *Id.*

Instead of adopting a view that only direct victims of discrimination ought to have standing, *Thompson* held that the term 'aggrieved' in Title VII covers "any plaintiff with an interest 'arguably [sought] to be protected by the statute,'" *id.* at 178 (quoting *Nat'l Credit Union Admin. v. First Nat'l Bank & Trust Co.*, 522 U.S. 479, 495 (1998) (internal quotation marks omitted)). The only plaintiffs excluded under that approach were those "whose interests are unrelated to the statutory prohibitions in Title VII." *Id.* That limitation is consistent with that of the court below and adopts the same distinction that the Eleventh Circuit utilized in differentiating its holding in *Nasser*, 671 F.2d 432 (holding a developer challenging rezoning was outside the FHA's zone of interest because the lawsuit had no fair housing purpose) from its decision in *Baytree of Inverrary Realty Partners v. City of Lauderhill*, 873 F.2d 1407 (11th Cir. 1989) (holding developer challenging rezoning was within the FHA's zone of interest because the lawsuit asserted the rezoning was the product of racial animus). *See* Pet. App. 46a-47a.

If Congress intended to limit plaintiffs to objects of discrimination, the *Thompson* Court said, "it

would more naturally have said 'person claiming to have been discriminated against' rather than 'person claiming to be aggrieved.'" 562 U.S. at 177.

The Bank further denies that the City's injuries can be linked to Wells Fargo's allegedly discriminatory conduct. In doing so, Wells Fargo does not refute the allegations, supported by expert regression analysis, that provides the linkage, or the logic that countless studies support. *See* J.A. 301-12, 322-26. Instead, it comes up with a remarkable hypothetical. It speculates that "[i]f the same homes had been subject to foreclosure but their owners had *not* suffered any discrimination, the City would have faced the same alleged reduction in revenues and increase in spending." W.F. Br. 28 (emphasis in original). From that hypothetical, the Bank then concludes "the City has pleaded no injury to an interest in non-discrimination." *Id.*

The logic behind this argument escapes the City's grasp. Under this reasoning, one could say that if, in *Trafficante*, a minority seeking an apartment was turned away, not because of his or her minority status, but because of bad credit, the tenant-plaintiffs would still have the same injury—harm to their interests in the benefits of an integrated society. Therefore, on the basis of the Bank's logic, the actual *Trafficante* plaintiffs, suing after a prospective tenant was turned away for a discriminatory reason, also could not plead an injury to an interest in non-discrimination.

The Bank then doubles down on this misguided hypothetical. It suggests that if it had issued

predatory loans to everyone, the City's injury would be worse, but no discriminatory component would exist. WF Br. 29-30. It then says that the fact that the City's injuries then would have been worse due to even more foreclosures "proves that the City lacks an interest in non-discrimination itself." *Id.* at 30. Their conclusion, however, does not follow from their hypothetical. If you remove the discriminatory element from any legitimate FHA case, there is no viable FHA action. Nevertheless, that does not mean that cases *with* the discriminatory element no longer have an interest in non-discrimination.

The best example of the failure of the Bank's hypothetical comes from two cases the Eleventh Circuit contrasted in the decision below. In *Nasser*, 671 F.2d 432, the Eleventh Circuit held a private developer did not have standing to challenge a rezoning plan under the FHA because there was no "allegation of interference with the plaintiff's rights or that [the plaintiff had] aided or encouraged any other person in the exercise or enjoyment of any right protected by the Act." *Id.* at 438.

On the other hand, another private developer mounting a different challenge to a different rezoning plan under the FHA was accorded standing because the developer alleged that the zoning decision was racially motivated and rendered the property worthless. *See Baytree*, 873 F.2d at 1408. The fact that one fact pattern did not have an element of discrimination and the other did, even though both suffered the same ultimate injury, did not oust both. It only ousted the one that could not claim the injury derived from stating a claim under the FHA.

Reviewing the differences between its decisions in *Nasser* and *Baytree*, the Eleventh Circuit in this case held that, "[l]ike Baytree, the City claims to have suffered an economic injury resulting from a racially discriminatory housing policy." Pet. App. 47a. The City urges this Court to adopt the same approach, distinguishing cases that do not allege any element of discrimination from those, like this one, that have ample allegations of discriminatory conduct.

D. The proffered First Amended Complaint was far more than a sprinkling of conclusory statements unrelated to the City's injuries.

The Bank argues that the City's proffered First Amended Complaint (J.A. 350), describing the City's cognizable interests "in promoting fair housing and securing the benefits of an integrated community" and the fair housing efforts of its Department of Community and Economic Development fails to suggest that the City's interests plausibly were actually affected. WF Br. 33. It says there is no explanation of how discriminatory lending frustrates that interest. *Id.* Such a statement can only mean that the Bank has turned a blind eye to the other, detailed allegations of the pleading.

For example, the proposed complaint states that Miami has "an active and longstanding interest in the quality of life and the professional opportunities that attend an integrated community," which it attempts to achieve

> through its Department of Community and Economic Development, which is

> charged with responsibility for operating the City's fair housing program, reducing illegal housing discrimination, monitoring and investigating fair housing complaints, supporting fair housing litigation, and conducting research and studies to identify and address fair housing impediments as a means of improving the overall quality of life in the city.

J.A. 362-63.

It requires no leap of faith to understand that instances of housing discrimination as widespread as Miami has alleged will frustrate the Department's efforts and deplete its resources. There is no difference between Miami's claim and the non-profit organization in *Havens*, a plaintiff that Wells Fargo concedes has standing to pursue an FHA action.

The Bank then asserts that the City failed to show how discriminatory lending that is concentrated in minority neighborhoods denies anyone the benefits of an integrated community, because the "City never explains how Wells Fargo's lending threatened to change the racial composition of Miami or any of its neighborhoods." WF Br. 34. Two responses seem in order. First, in making the argument, the Bank seems to suggest that the FHA provides no remedy to discrimination when the biased act occurs in a homogenous community. Thus, under that formulation, an overwhelmingly minority community can never be the subject of discriminatory lending. Yet, every individual in that community

unquestionably still has an FHA cause of action for housing discrimination.

Second, consider a well-maintained minority neighborhood that falls into disrepair, blight, crime and impoverishment because of a concentration of foreclosed homes resulting from predatory lending. Such a neighborhood will now no longer attract non-minority residents to create a more integrated community—and the newly undesirable conditions will cause the flight of those who already reside in the neighborhood.

In the end, it would be a remarkable concept to create a barrier to standing for cities to enforce one of the nation's most important anti-discrimination statutes. The FHA explicitly recognizes that both private parties and government have authority to enforce its mandates through lawsuits and standing is afforded "within constitutional limitations" to direct and indirect victims of housing discrimination. Here, the City is both a governmental entity and a private enforcer of the Act. The effect that the scourge of housing discrimination causes upon it is undeniable and helped call the FHA into being. Governmental units have "statutory duties, responsibilities, and interests" "broader than the discrete interests of any particular private party," and acts more than as "a proxy for the victims of discrimination." *Gen. Tel. Co. of the Nw., Inc. v. EEOC*, 446 U.S. 318, 326 (1980). Here, the City's interest and the harms visited upon it by discrimination provide the requisite standing.

II. The City Has Sufficiently Pleaded Proximate Cause.

Miami pleaded a chain of causation that sufficiently establishes that the Bank's conduct in issuing undesirable mortgages to minority borrowers was the proximate cause of the City's injuries. Even if FHA proximate cause has a directness requirement, the City satisfies that benchmark because the Bank's misconduct in issuing discriminatory loans had a direct effect on the City's efforts to assure fair housing. J.A. 266-67. 334, 350-51, 362-63, 416-17

In *Inclusive Communities*, this Court required a plaintiff seeking to "make out a prima facie case of disparate impact" "to allege facts at the pleading stage *or* produce statistical evidence demonstrating a causal connection." 135 S. Ct. at 2523 (emphasis added) . There is no heightened pleading standard in discrimination cases. *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 512 (2002). In fact, "[o]rdinary pleading rules are not meant to impose a great burden on a plaintiff, but [instead] provide a defendant with some indication of the loss and the causal connection that the plaintiff has in mind." *Dura Pharms., Inc. v. Broudo*, 544 U.S. 336, 337 (2005).

Miami met the *Inclusive Communities* standard. The City pleaded a prima facie case of disparate-impact FHA liability through statistical disparities in the treatment of minority and white borrowers tied to a policy that caused the disparity, J.A. 357-58, 381, 389, 392. Additionally, Miami presented statements from former Bank employees, establishing that the Bank intentionally

discriminated against minority borrowers. *Id.* at 395-98.

The City alleged that a regression analysis of available data in Miami reported by the Bank demonstrated that African-American borrowers were 4.321 times more likely to receive a discriminatory loan than a white borrower with similar underwriting and borrower characteristics. Latino borrowers were 1.576 more likely to receive such loans. These disparities existed even among borrowers with FICO credit scores above 660. An African-American borrower with a FICO score greater than 660 was 2.572 times more likely to receive a discriminatory loan than a white borrower with similar underwriting and borrower characteristics, and a Latino borrower with a FICO score above 660 was 1.875 times more likely to receive such a loan. *Id.* at 323-24.

The Complaint also alleged facts that these loan practices foreseeably resulted in foreclosures, did so more rapidly for African-American and Latino borrowers than whites, and that the foreclosures were caused by the discriminatorily unfavorable loan terms. For example, a discriminatory loan in Miami was 5.494 times more likely to result in foreclosure than a non-discriminatory loan. *Id.* at 333. Additionally, a discriminatory loan to an African-American borrower in Miami was 13.324 times more likely to result in foreclosure than a non-discriminatory loan to a white borrower with similar risk characteristics, and a discriminatory loan to a Latino borrower was 17.341 times more likely to result in foreclosure than a loan in a predominantly non-discriminatory loan to a white borrower with similar risk characteristics. *Id.* Moreover, the

Complaint alleged that a loan made to a borrower residing in a predominantly minority neighborhood in Miami was 6.975 times more likely to result in foreclosure than a loan in a non-minority neighborhood. *Id.* at 272.

Miami's Complaint relied upon a rigorous and well-accepted method of multivariate statistical regressions to analyze the pattern of discrimination and its impact on the City. *Id.* at 323-24, 333. *Cf.*, *e.g.*, *ATA Airlines, Inc. v. Fed. Express Corp.*, 665 F.3d 882, 889-90 (7th Cir. 2011) (Posner, Easterbrook, Wood, JJ.) (discussing the difference between proper and improper statistical regressions). It therefore made out a more than plausible case of proximate cause.

This Court's approval of similar municipal claims in *Gladstone*, confirms the legitimacy of the City's causal theory. Moreover, *Havens*' holding that both direct and indirect harms are within the contemplation of the FHA's prohibitions controls the applicable proximate cause analysis and supports Miami's claims. *See* 455 U.S. at 375.

A. Miami adequately pleaded a causal chain that satisfies proximate cause.

Miami's allegations of proximate cause are sufficient because the injury to Miami was the direct, foreseeable result of the Banks' conduct. An FHA action is, "in effect, a tort action" and, as a general matter, tort principles derived from the common law control. *Meyer v. Holley*, 537 U.S. 280, 285 (2003) ("when Congress creates a tort action, it legislates against a legal background of ordinary tort-related liability rules and consequently intends its

legislation to incorporate those rules"). Pursuant to these principles, proximate-cause analysis "normally eliminates the bizarre," *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 536 (1995), and the connection cannot be "so attenuated that the consequence is more aptly described as mere fortuity." *Paroline v. United States*, 134 S. Ct. 1710, 1719 (2014) (citing *Exxon Co., U.S.A. v. Sofec, Inc.*, 517 U.S. 830, 838-39 (1996)). The proximate-cause analysis excludes only those "link[s] that [are] too remote, purely contingent, or indirect." *Hemi Group, LLC v. City of N.Y., N.Y.*, 559 U.S. 1, 9 (2010).

Miami's allegations are neither bizarre, nor the product of mere fortuity or unforeseen contingency, but were readily foreseeable to the Bank. Indeed, given the close and well-recognized connection between discriminatory actions and the harms alleged by the City, it may be fairly said that the "injury alleged is so integral an aspect of the [violation] alleged [that] there can be no question" that proximate cause is present. *Blue Shield of Va. v. McCready*, 457 U.S. 465, 479 (1982).

This Court's decision in *Gladstone* confirms the sufficiency of Miami's allegations that the bank's conduct was the proximate cause of the injuries alleged. In *Gladstone*, this Court ruled that the same chain of causation alleged here was sufficient. The Village of Bellwood had sued, alleging that discriminatory real estate practices caused a downward deflection of housing prices and a concomitant diminution of Bellwood's tax base, "thus threatening its ability to bear the costs of local

government and to provide services."[7] 441 U.S. at 110, 111. The chain of causation alleged for Bellwood is precisely the chain alleged here.

This Court enhanced *Gladstone*'s holding in its controlling analysis in *Havens*. In *Havens*, this Court contrasted the standing of "testers," those who do not actually seek housing but test to see if discrimination is occurring, with "'neighborhood' standing," based on deprivation of the benefits of living in an integrated community. 455 U.S. at 375. Testers' injuries are direct, this Court held, but an injury derived from neighborhood standing "is an indirect one." *Id.* The "distinction is, however, of little significance" in the context of the FHA, and the "injury alleged thus clearly resembles that which we found palpable in Bellwood," where the harm caused deprived the municipality of "'the social and professional benefits of living in an integrated society' and had caused them 'economic injury.'" *Id.* at 375-76 (quoting *Gladstone*, 441 U.S. at 115 & n.30).

Even to the extent *Gladstone* and *Havens* do not control, Miami's allegations are sufficient under this Court's proximate-cause jurisprudence. That analysis involves the degree of connection required

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[7] Even as it held that the allegations were sufficient, this Court recognized that Bellwood's complaint was "more conclusory and abbreviated than good pleading would suggest," *Gladstone*, 441 U.S. at 110, even under the pre-*Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), criteria. By contrast, Miami's Complaint spanned 56 pages and provided enormous detail about the connections between the Bank's misconduct and the harm flowing to the City.

between the harm and prohibited conduct and is statute-specific.[8] *Lexmark*, 134 S. Ct. at 1390.

Recently, this Court explained that proximate cause is "often explicated in terms of foreseeability," *Paroline*, 134 S. Ct. at 1719, as the Eleventh Circuit did below. Pet. App. 38a. *See also Milwaukee & St. Paul Ry. Co. v. Kellogg*, 94 U.S. 469, 475 (1876) (to satisfy proximate cause, an injury must be the "natural and probable consequence of the negligence or wrongful act, and that it ought to have been foreseen in the light of the attending circumstances"); *Blue Shield*, 457 U.S. at 479. All that is required is that the alleged cause be "one with a sufficient connection to the result." *Paroline*, 134 S. Ct. at 1719. Even a dissenting opinion upon which the Bank heavily relies acknowledges that an "intervening third-party act, even if criminal, does not cut a causal chain where the intervening act is foreseeable and the defendant's conduct increases the risk of its occurrence." *Hemi Grp.*, 559 U.S. at 25 (Breyer, J., dissenting). Moreover, as Justice Breyer explained the "concept of directness in tort law [is used to] expand liability (for direct consequences) beyond what was foreseeable, not to eliminate liability for what was foreseeable." *Id.*

Nonetheless the Bank resists foreseeability, insisting that it be accompanied by directness. WF Br.

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[8] For example, the Federal Employers' Liability Act ("FELA"), 45 U.S.C. § 51 *et seq.*, utilizes a relaxed proximate cause standard, in recognition of the importance the statute places on the safety of railroad workers. *CSX Transp., Inc. v. McBride*, 564 U.S. 685, 692 (2011).

40 (citing *Paroline*, 134 S. Ct. 1722). *Paroline* does not require the two go hand in hand, but merely observed that both were present in that case.

Rather than the Bank's treatment of directness as requiring "first step" connection, a proximate cause need only be "substantial enough and close enough to the harm to be recognized by law, [and] a given proximate cause need not be, and frequently is not, the exclusive proximate cause of harm." *Sosa v. Alvarez-Machain*, 542 U.S. 692, 704 (2004). *See also* W. Page Keeton *et al.*, *Prosser and Keeton on the Law of Torts* § 41, at 268 (5th ed. 1984) ("If the defendant's conduct was a *substantial factor* in causing the plaintiff's injury, it follows that he will not be absolved from liability merely because other causes have contributed to the result, since such causes, innumerable, are always present." (emphasis added)).

In any event, foreseeability is not an exercise in consequences as far as the mind can imagine. It operates within the zone of interests the statute establishes and is individual to each statute. Where, as here, the statute constitutes a "broad legislative plan to eliminate all traces of discrimination within the housing field," *Marr v. Rife*, 503 F.2d 735, 740 (6th Cir. 1974), and its language "is broad and inclusive," *Trafficante*, 409 U.S. at 209, foreseeability is cabined in its reach by the purposes served by the legislation. Because the FHA protects both direct and indirect injuries, *Havens*, 455 U.S. at 375, the statute is unlike those "'intended to protect only a particular class of persons or to guard only against a particular risk or type of harm'" for which foreseeability alone is inappropriate. Keeton, *supra*, § 43.

The flower shop that loses a customer as a result of discriminatory loans that blighted a neighborhood, WF Br. 41, is not comparable to Miami. A store cannot claim the same interest in promoting and vindicating fair housing that is true of a U.S. city. It was urban decay and unrest that the FHA was designed to address. *See supra* pp. 13-15. Unlike a local store, Miami stands in similar shoes to a non-profit who assists in equal access to housing and expended resources to identify and counteract discriminatory housing practices. The Bank does not dispute the standing that non-profit, or the proximate cause behind its economic injuries. *See* WF Br. 45. Cities, too, should not be barred from undertaking such a lawsuit as well.

Banks face no undue burden from application of a foreseeability inquiry for proximate cause that is informed by the statutory zone of interest of the FHA. There was no mystery to the harm discriminatory lending practices had on the Miami community. The sheer magnitude of the banks' mortgage operations suggests they had actual knowledge of the well-being of the mortgages they financed. In 2015 alone, Wells Fargo originated $213.2 billion in residential mortgage loans. *Wells Fargo Annual Report* 30 (2015) (WF Report), *available at* https://www08.wellsfargomedia.com/assets/pdf/about/investor-relations/annual-reports/2015-annual-report.pdf.

A multi-billion-dollar business with extensive regulatory and reporting obligations and sophisticated risk management mechanisms cannot be unaware that a large number of loans to specific

categories of borrowers in specific cities will generate and actually have generated foreclosures or the natural consequences of those foreclosures. This is particularly true in Florida because at the time Miami filed its complaint in 2013, the State had the country's highest foreclosure rate and Miami had the highest foreclosure rate among the 20 largest metropolitan statistical areas in the country. J.A. 268.

Indeed, a cursory review of the banks' detailed public statements as reflected in recent Annual Reports provides an extensive discussion concerning the scope and extent of the banks' underwriting, risk management, compliance, and internal audit functions, confirming that they possessed actual knowledge of the consequences of their lending practices.[9] For example, Wells Fargo recites in exhaustive detail practices and procedures regarding risk management, which in turn, describe its risk culture, incorporating "three lines of defense" and an extensive list of internal responsible parties overseeing that risk. WF Report 58-62.

Wells Fargo further describes its procedures pertaining to credit risk management, including residential mortgage loans. It explains that it uses extensive "risk measurement and modeling," as well as a "continual loan review and audit process" to adhere "to a well-controlled underwriting process." *Id.*

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[9] The City has gleaned this information from publicly available statements of the banks. It is not difficult to imagine how additional information would be available through discovery to establish the banks possessed actual knowledge of the consequences of their lending practices.

at 63. It also "employ[s] various credit risk management and monitoring activities to mitigate risks associated with multiple risk factors affecting loans we hold, could acquire, or originate." *Id.* The Bank's credit monitoring for residential mortgage loans includes consideration of factors such as FICO scores, delinquencies, loan to value and combined loan to value ratios. *Id.* at 69.[10]

As the Eleventh Circuit recognized, the banks employ sophisticated analytic tools to perform consumer credit risk analysis.[11] Pet. App. 55a.

While a particular borrower might experience a random, unexpected set of circumstances that might somehow escape the Banks' comprehensive risk management practices and procedures, randomness cannot explain the volume of 990 discriminatory loans issued by Wells Fargo and another 3,325 by Bank of America preliminarily identified in Miami's

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[10] Substantially similar discussions concerning risk management can be found in prior annual reports. *See, e.g.*, *Wells Fargo Annual Report* (2014), *available at* https://www08.wellsfargomedia.com/assets/pdf/about/investor-relations/annual-reports/2014-annual-report.pdf, and the *Wells Fargo Annual Report* (2013), *available at* https://www08.wellsfargomedia.com/assets/pdf/about/investor-relations/annual-reports/2013-annual-report.pdf.

[11] Wells Fargo asserts that its sophisticated analytical tools, capable of anticipating which loans are likely to fail and result in foreclosures "is beside the point." WF Br. 49 n.9. It isn't. This case is at the pleading stage, and the existence of those tools makes the foreseeability of those consequences plausible, just as the wealth of studies showing what happens to cities when discriminatory lending results in a wave of foreclosures supports the plausibility of the causal chain. *See* J.A. 322-23, 337.

Complaint. J.A. 95, 341. Miami alleged that its use of Hedonic regression analysis enabled it to eliminate those that were not the product of improper and discriminatory considerations. *Id.* at 336.

Armed with actual knowledge that their lending conduct resulted in foreclosures, it requires no giant leap to conclude the Banks were well-aware of the harm such conduct inflicted upon municipalities. To begin with, any large residential mortgage lender recognizes that a foreclosed property is located within a community that has the obligation to alleviate the resulting blight to preserve the health, welfare, and safety of its residents. Furthermore, banks routinely conduct appraisals during the lending process, and therefore, readily understand the relationship between foreclosures and property values, and, consequently, the reduction in property taxes resulting from a lowered property values.

Moreover, the Banks were certainly aware of the seminal report published in 2005 by William Apgar and Mark Duda of the Joint Center for Housing Studies at Harvard that exhaustively documented the connection between foreclosures and the resulting injuries suffered by communities.[12] *See id.* at 301-02.

Additionally, the linkage between foreclosures and municipal injuries was extensively documented by the United States Conference of Mayors. *See*

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[12] W. Apgar, M. Duda & R. Gorey, *The Municipal Costs of Foreclosures: A Chicago Case Study* (2005), *available at* http://www.995hope.net/content/pdf/Apgar_Duda_Study_Full_Version.pdf.

Combating Problems of Vacant and Abandoned Properties (June 2006), *available at* http://usmayors.org/bestpractices/vacantproperties06.pdf, *Vacant and Abandoned Properties Survey and Best Practices* (2008), *available at* http://www.usmayors.org/bestpractices/vacantproperties08.pdf, and *Impact of the Mortgage Foreclosure Crisis on Vacant and Abandoned Properties in Cities—a 77 City Survey* (June 2010), *available at* https://usmayors.org/publications/2010%20VAP%20Report.pdf. Thus, extensive, publicly available studies document the connection articulated by this Court in *Gladstone* between discriminatory lending practices and their impact on cities within the sector of the Nation's economy that the FHA addresses.

B. Miami's allegations suffice to establish proximate cause, if proven.

Lexmark made clear a plaintiff is not required to *prove* proximate causation to defeat a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6): "If a plaintiff's allegations, taken as true, are . . . sufficient [to establish proximate causation], then the plaintiff is entitled to an opportunity to prove them." *Lexmark*, 134 S. Ct. at 1391 n.6. After all, causation is an intensely factual question that should typically be resolved by the fact-finder. *Sofec*, 517 U.S. at 401-41. *See also Pac. Shores Props., LLC v. City of Newport Beach*, 730 F.3d 1142, 1168 (9th Cir. 2013), *cert. denied sub nom. City of Newport Beach v. Pac. Shores Props., LLC*, 135 S. Ct. 436 (2014).

As the Eleventh Circuit held in reviewing the City's Complaint, "it is clear that the harm the City claims to have suffered has 'a sufficiently close connection to the conduct the statute prohibits.'" Pet. App. 57a (quoting *Lexmark*, 134 S. Ct. at 1390). The Court recognized the difficult evidentiary task the City faced, but found that "[a]t this stage, it is enough to say that the City has adequately pled proximate cause, as required by the FHA." *Id.* at 58a. The City should be allowed to assay its proof.

C. The FHA has no directness requirement.

The Bank argues that the claim is insufficient because it is not based on a "direct" harm. WF Br. 38-46. Yet, in *Havens*, this Court resolved this issue and held that the distinction between direct and indirect harms was "of little significance in deciding" whether an FHA plaintiff had a cause of action. 455 U.S. at 375.

For some laws, it matters whether the injuries are direct or derivative, but "[t]he Fair Housing Act is not among those statutes." *New West, L.P. v. City of Joliet*, 491 F.3d 717, 721 (7th Cir. 2007) (holding indirect, derivative injuries are cognizable and compensable under the FHA). Like Miami here, the Village of Bellwood claimed lost property taxes and other expenses based on discrimination perpetrated against others. *See Gladstone*, 441 U.S. at 109-11. In *Havens*, a non-profit organization advancing fair housing successfully claimed a drain on its resources from impairment of its mission, not direct discrimination. 455 U.S. at 378-79.

In this way, the FHA contrasts with other federal statutes to which the Bank compares it. For example, the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961 *et seq.*, presents natural concerns for directness in proximate-cause analysis because the action depends on the existence of closely connected predicate acts. *See Bald Eagle Area Sch. Dist. v. Keystone Fin., Inc.*, 189 F.3d 321, 330 (3d Cir. 1999). Thus, in the RICO context, this Court held a directness requirement was part of proximate cause because the language of RICO was based on the Clayton and Sherman Acts, which also require a direct relationship, and because it is otherwise difficult to "ascertain the amount of a plaintiff's damages attributable to the violation, as distinct from other, independent, factors." *Holmes v. Sec. Inv'r Prot. Corp.*, 503 U.S. 258, 269 (1992) (citation omitted).[13] In addition, *Holmes* noted that

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[13] The Bank asserts that similar considerations apply under the FHA because the City's damages could "involve a host of independent actors." WF Br. 47. However, the City anticipated these issues and asserted, directly in its Complaint, that regression analysis, employed by statisticians to eliminate the extent to which other factors played a role in the claims and damages like those of the City and to determine whether race influenced decision making, could sort through these disparate causes. J.A. 336-38. *See also Garcia v. Johanns*, 444 F.3d 625, 635 (D.C. Cir. 2006) (discussing the importance of regression analysis). The analysis can control for a variety of potential influences, while estimating the size and statistical significance of the individual influences. *See* D. James Greiner, *Causal Inference in Civil Rights Litigation*, 122 Harv. L. Rev. 533 (2008). *See also In re: Neurontin Mktg. & Sales Practices Litig.*, 712 F.3d 60, 69 (1st Cir. 2013) ("regression analysis is a widely accepted method of showing causation"); Daniel L. Rubinfeld, "Reference

the statute's treble damages provision provided a special incentive for "directly injured victims . to vindicate the law as private attorneys general, without any of the problems attendant upon suits by plaintiffs injured more remotely." *Id.* at 269-70. Such an incentive does not exist within the FHA, where directly injured victims are, for the reasons stated below, ill-positioned to vindicate the law.

While *Holmes* found that RICO "should not get [] an expansive reading," *id.* at 266, this Court has consistently interpreted the FHA broadly. *See, e.g., Havens*, 455 U.S. at 372; *Gladstone*, 441 U.S. at 109. That capacious interpretation is a function of the importance Congress placed on the rights the FHA protects. The Bank's RICO cases are, thus, inapposite. The requirements for "proximate cause" under one federal statute aimed at one harmful activity are not the same as under a different statute aimed at an entirely different harmful activity. The question presented requires statutory interpretation, not citation to and reliance on unrelated cases that intone the words "proximate cause."

Guide on Multiple Regression," in Federal Judicial Center, *Reference Manual on Scientific Evidence* 179-227 (2d ed. 2000).

Given that a regression analysis, even one that "includes less than 'all measurable variables' may serve to prove a plaintiff's case," *Bazemore v. Friday*, 478 U.S. 385, 400 (1986), the City's allegations in its pleading were more than enough to provide a sufficiently close causal connection between the FHA violations and the City's injuries and gives rise to a "reasonable inference that [the Bank] is liable for the misconduct alleged," *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009), as the Eleventh Circuit held. Pet. App. 55a.

Similarly, in *Lexmark*, this Court held that a Lanham Act lawsuit required an "injury flowing directly from the deception" at issue. Even under this "directness" inquiry, the Court found sufficient proximate cause despite the plaintiff, who was not a consumer or direct competitor of Lexmark, having injuries that were "not direct, but include[d] the intervening link of injury to the remanufacturers." 134 S. Ct. at 1391, 1394. Thus, this Court recognized that the plaintiff's allegations "might not support standing under a strict application of the 'general tendency' not to stretch proximate causation 'beyond the first step.'" *Id.* at 1394 (quoting *Holmes*, 503 U.S. at 271). Even so, it still found sufficient continuity between the injury to the direct victim and the injury to the indirect victim "without the need for any 'speculative . . . proceedings' or 'intricate, uncertain inquiries.'" *Id.* (quoting *Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451, 459-60 (2006)).

While RICO and other federal statutes restrict standing and provide incentives for individual lawsuits, Congress adopted a broad approach to standing in the FDA in support of the idea that eradicating housing discrimination is a priority of the first order. *Trafficante*, 409 U.S. at 212. The Bank cites no case that holds that the *FHA* imposes a requirement that the harm caused proceed in the first step from violations of the act—and *Havens* denies that. Instead, recognizing that lawsuits by individuals, by itself, were insufficient to realize its goals, Congress created an important and broad role for government in vindicating the law. In fact, individual borrowers are ill-equipped to recognize patterns of discrimination that give rise to disparate-

impact claims. They do not know that what may have happened to them happened to others. They do not have the means to undertake the statistical analysis necessary to assert a prima facie claim or resources to engage in such litigation. Governmental entities, such as cities, and organizations dedicated to fair housing, more often do.

D. Even if FHA proximate cause imposes a directness requirement, Miami's complaint satisfied or could satisfy the requirement.

Even if this Court accepts the Bank's invitation to impose a more stringent "proximate cause" requirement on FHA pleadings, Miami's Complaint states a claim because the City's alleged injuries were caused by the Bank's unlawful discriminatory acts and the City has a palpable interest in fair housing that was harmed. It cannot be said that the Bank's misconduct in issuing discriminatory loans did not have a direct effect on the City's efforts to assure fair housing.

Miami is a diverse community with an estimated population of 441,003. U.S. Census Bureau, *State & County Quick Facts: Miami (city), FL* (2015), http://www.census.gov/quickfacts/table/PST045215/1245000,00 (last visited Sept. 25, 2016). The City has an inherent interest in racial diversity and non-discrimination in order to achieve the many benefits of living in an integrated community. This interest is directly harmed by the Bank's discriminatory lending policies. In this way, the City's interest easily exceeds that of the individual white and black residents in a

single apartment complex, who asserted the same interest in an integrated community, claims that this Court permitted to proceed under the FHA in *Trafficante*.

Miami's claim is consistent with this Court's holdings that recognize standing when the impact of the misconduct on "the village's racial composition" adversely affects the municipality's housing market, pricing, and property values, "directly injure[s] a municipality by diminishing its tax base," undermines the village's interest in "'stable, racially integrated housing,'" and begins "to rob [municipality] of its racial balance and stability." *Gladstone*, 441 U.S. at 110-11. If these connections, which did not trouble the *Gladstone* Court, were substantial and sufficient in 1979, then there is no reason to treat them as remote or too attenuated today. The municipal interest approvingly identified for the Village of Bellwood is shared by all municipalities, especially the City of Miami.

Among its efforts that authenticate the City's interests in integrated housing, distinctive from that of a local shop or utility, Miami established a "Department of Community & Economic Development," which has responsibility for operating the City's fair housing program, a program designed to "affirmatively further fair housing objectives of Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, as amended, and other relevant federal, state, and local housing laws." J.A. 233. Through the Department, "the City actively works to reduce illegal housing discrimination" by providing "education and training, monitoring and

investigating fair housing complaints utilizing techniques to support fair housing litigation, and conduct research and studies to identify and address fair housing impediments." *Id.*

In fact, the Department's mission statement declares that it "assists in creating a viable urban community for the most needy persons in our City while reducing poverty, embracing diversity, assisting with economic development, and improving the overall quality of life." City of Miami, Department of Community and Economic Development, *About Us*, *available at* http://www.ci.miami.fl.us/communitydevelopment/pages/about_us/ (last visited Sept. 25, 2016). Plainly, the City has a strong, active, and longstanding interest in the professional, stability, and quality of life benefits of an integrated community.

The connection between the Bank's conduct and the inquiry to Miami's interest in a stable, integrated community, its economic injuries and its request for injunctive relief, is sufficient to satisfy the requirements of proximate cause. The Bank's discriminatory conduct adversely affected those interests directly in a foreseeable way. The City's fair-housing efforts inform the proximate-cause analysis, support the causal connection, and distinguish the City from non-participants in fair housing. They establish that the City suffered its damages while fighting the very "conduct the statute prohibits." *Lexmark*, 134 S. Ct. at 1390-91.

Moreover, logical steps, adequately alleged, connect the Bank's unlawful acts with the full array

of the City's injuries: the City asserts that the Bank issued loans on a discriminatory basis, targeting African-Americans and Latinos for less favorable treatment. That steering of minority homebuyers to costlier loans greatly increased the likelihood of foreclosures, as the Bank's own analytical tools would have shown.

Borrowers charged more for a loan than they qualify for, or deceived into taking a loan they cannot afford, are far more likely to lose their home to foreclosure. And the loans associated with this discriminatory conduct did, in fact, result in a significantly increased rate of foreclosures. Many of those foreclosed homes will fall into disrepair and become vacant, resulting in the loss of property taxes, impairment of the city's fair housing efforts, and imposition of remediation and other costs to the city. Without the Bank's actions, these foreclosures and vacancies would not have occurred. This conclusion is more than plausible, having been adopted by this Court in *Gladstone*, 441 U.S. at 110-11 ("[a] significant reduction in property values directly injures a municipality by diminishing its tax base, thus threatening its ability to bear the costs of local government and to provide services"), and is further supported by authoritative federal investigation. These foreclosures resulting from the Banks' discriminatory lending practices decimated minority neighborhoods in Miami, suppressed the property tax values of both the foreclosed properties and surrounding properties, and impeded the City's interest in stable, integrated communities.

The nationwide scale of the Bank's improper targeting of minority borrowers through predatory loans served as the percussion cap that propelled a host of economic evils that created the recent financial crisis. The federal Financial Crisis Inquiry Commission, appointed pursuant to Public Law No. 111-21, 123 Stat. 1617 (May 20, 2009) (codified as amended at 31 U.S.C. § 3729), concluded that "it was the collapse of the housing bubble—fueled by low interest rates, easy and available credit, scant regulation, and toxic mortgages—that was the spark that ignited a string of events, which led to a full-blown [financial] crisis in the fall of 2008." *Financial Crisis Inquiry Report* xvi (Jan. 2011) ("FCIR"), *available at* http://www.gpo.gov/fdsys/pkg/GPO-FCIC/pdf/GPO-FCIC.pdf. The report details a doubling of homes put into foreclosure in 2006-07 within months of taking a loan because "they likely took out mortgages that they never had the capacity or intention to pay," in part because mortgage brokers "were paid 'yield spread premiums' by lenders to put borrowers into higher-cost loans so they would get bigger fees, often never disclosed to borrowers." *Id.* at xxii. Simply put, "[l]enders made loans that they knew borrowers could not afford." *Id.* As a result of these actions, *the Commission found it entirely foreseeable that the crisis would occur*. *Id.* Moreover, Miami alleged that the misconduct continued after that dark period had passed in the form of other loans that were more expensive and riskier and which were disproportionately made to minority borrowers. J.A. 306, 388.

Given the directness of the injury Miami alleges flowing from the Bank's conduct, Miami's

allegations satisfy any directness requirement that could be imposed, because "directness" cannot be denied in the effect of the alleged misconduct on Miami's fair housing efforts.

Precedents make clear that the "fact that FHA plaintiffs' injuries must be proximately caused by the defendant's discriminatory acts does not, of course, mean that defendants are not liable for foreseeable, but indirect, effects of discrimination." *Pac. Shores Props.*, 730 F.3d at 1168 n.32. For example, in *Lexmark*, even though the plaintiff's injuries were not "direct," this Court found sufficient continuity between the injury to the direct victim and the injury to the indirect victim "without the need for any 'speculative . . proceedings' or 'intricate, uncertain inquiries.'" 134 S. Ct. at 1394 (quoting *Anza*, 547 U.S. at 459-60). Thus, the "directness" or "anti-derivative" version of the rule propounded by the Bank was actually rejected by *Lexmark*, as it found that a non-competing manufacturer could show sufficient proximate cause to bring an action based on Lexmark's false advertising to others, not the plaintiff.

Similarly, in *Staub v. Proctor Hospital*, 562 U.S. 411 (2011), this Court found no fatal break in the causal chain when the employment action was ultimately taken by a company official without any discriminatory animus, but that the termination of employment could still be traced back to previous actions taken by someone else with the requisite animus. It was sufficient that the improper motive was a causal factor. *Id.* at 422.

The consequences of such a strict directness requirement of the type imagined by the Bank at the pleading stage could undermine the FHA's commitment to eradicating housing discrimination and would be inconsistent with the disparate-impact regime this Court only recently validated in *Inclusive Communities*.[14] It would undermine the ability of non-profits as in *Havens* and municipalities as in *Gladstone* to vindicate the FHA's promise of tearing down the barriers that divide us in the housing market. That promise must be vindicated by governmental entities, victims of discrimination, and stand-ins for those victims, such as non-profits and developers who demonstrate their own injuries. With a mandate and purpose as broad as it has, and where the individual victims of discrimination can never realize the scope and full consequences of the violations visited upon them, cities must be among those who can connect the dots and call wrongdoers to account.

Gladstone correctly permitted a municipality to sue over lost tax revenue and the expenses it incurred

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[14] The Bank also asserts that Miami must allege its injuries are an "'intended' or "'desired' consequence of [the Bank's] alleged conduct." WF Br. 41 n.7 & 49 (citing *Hemi Grp., LLC*, 559 U.S. at 24 (Breyer, J., dissenting)). The Bank, however, misreads an observation made by Justice Breyer about the facts in that case and attempts to turn it into a requirement of proximate cause, when Justice Breyer indicates that foreseeability should be the touchstone for proximate cause if the statute at issue is to be treated as a creature of the common law. *See* 559 U.S. at 25. Here, the City alleged, J.A. 277, 326, and the Eleventh Circuit recognized, *id.* at 55a-56a, that the Bank was in a particularly advantageous position to understand the consequences of its actions.

to advance fair housing and remediate neighborhoods affected by discriminatory housing practices. To be sure, "Congress has had [more than] 30 years in which it could have corrected our decision in [*Gladstone*] if it disagreed with it, and has not chosen to do so," *Hilton v. S. Carolina Pub. Ry. Comm'n*, 502 U.S. 197, 202 (1991), strongly indicating that there is nothing to correct. The City's injuries are well within the contemplation of proximate cause as applicable to the FHA.

CONCLUSION

The judgment of the Court of Appeals should be affirmed.

September 30, 2016

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WELLS FARGO & CO.
and WELLS FARGO BANK, N.A.,
Petitioners,

v.

CITY OF MIAMI,
Respondent.

On Writ of Certiorari to the
United States Court of Appeals
for the Eleven Circuit

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RULE 29.6 DISCLOSURE STATEMENT

The Rule 29.6 disclosure statement in the opening brief for petitioners remains accurate.

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IN THE

Supreme Court of the United States

No. 15-1112

WELLS FARGO & CO.
and WELLS FARGO BANK, N.A.,
Petitioners,

v.

CITY OF MIAMI,
Respondent.

On Writ of Certiorari to the
United States Court of Appeals
for the Eleventh Circuit

REPLY BRIEF FOR PETITIONERS

INTRODUCTION

The City's brief refutes a straw man: the argument that cities may *never* bring Fair Housing Act lawsuits. Wells Fargo has not made that argument. Rather, throughout this litigation, Wells Fargo has explained that cities—no less than any other "aggrieved person" under the FHA—may seek relief for injuries that are (1) within the statute's zone of interests, and (2) proximately caused by the discriminatory conduct alleged.

In the typical FHA case, any number of "aggrieved persons" readily meet those two limitations. Say an apartment complex engages in racial steering by

denying housing to minorities. The discriminatory acts directly injure the prospective tenants, who are personally discriminated against; the residents, who are deprived of the benefits of living in an integrated neighborhood; and the city, which is denied an integrated community. The racial steering may also injure a nonprofit organization that has spent money combatting the specific defendant's discriminatory acts. Each of those potential plaintiffs has suffered an injury that depends on the discriminatory nature of the defendant's conduct, and is proximately caused by that conduct.

The City here is different. Its asserted injuries are unconnected to any interest in non-discrimination and are far removed from any FHA violations. So though the City compares itself to the village in *Gladstone* and the nonprofit organization in *Havens*, the City is actually akin to the shareholder in *Thompson* and the landlord in *Lexmark*, who suffered derivative financial injuries.

That the City may not bring *this* suit for *these* injuries does not mean that cities may never sue under the FHA. Nor does it mean that the FHA will go unenforced. The Department of Justice has already sued Wells Fargo under the FHA, challenging the *same* lending practices at issue here. *See* Compl., *United States* v. *Wells Fargo Bank, N.A.*, No. 1:12-cv-1150 (D.D.C. July 12, 2012), ECF No. 1. In fact, when the City filed its suit, it copied *almost verbatim* DOJ's main allegations. In 2012, the district court in DOJ's suit entered a consent order "enjoin[ing]" Wells Fargo "from violating the antidiscrimination provisions of the FHA * * * in connection with the origination of residential mortgage loans" anywhere in the country, and requiring Wells Fargo to create a

$125-million fund to compensate "aggrieved persons nationwide"—whom DOJ identified as the individual loan recipients. Consent Order 5, 13 (Sept. 21, 2012), ECF No. 10. Last month, DOJ agreed that "Wells Fargo has satisfied each term of the Consent Order" and moved to dissolve the order. Joint Mot. 1 (Sept. 14, 2016), ECF No. 24. The case is all but over.

In short, the City seeks compensation for injuries this Court has never held cognizable, based on alleged violations DOJ has already addressed. The Eleventh Circuit should be reversed.

ARGUMENT

I. THE CITY'S ALLEGED INJURIES FALL OUTSIDE THE FHA'S ZONE OF INTERESTS

A. The FHA Imposes A Zone-Of-Interests Limitation Narrower Than Article III

Two unanimous decisions of this Court compel the conclusion that the FHA imposes a zone-of-interests limitation narrower than Article III. In *Lexmark International, Inc.* v. *Static Control Components, Inc.*, 134 S. Ct. 1377 (2014), this Court reaffirmed, 9-0, that the "zone-of-interests limitation * * * applies unless it is *expressly negated*." *Id.* at 1388 (emphasis added) (internal quotation marks omitted). And in *Thompson* v. *North American Stainless, LP*, 562 U.S. 170 (2011), this Court concluded, 8-0, that "the term 'aggrieved' must be construed more narrowly than the outer boundaries of Article III." *Id.* at 177.

The City and the Government ignore *Lexmark* and attempt to distinguish *Thompson*. Those efforts should be rejected.

1. The text of the FHA does not expressly negate the zone-of-interests limitation

The City (at 28) and the Government (at 15) contend that *Thompson*'s interpretation of "aggrieved" should not apply here because of the FHA's text. They point to the FHA's definition of "aggrieved person," which provides that an "aggrieved person" includes any person who "claims to have been," or "believes that such person will be," "injured by a discriminatory housing practice." 42 U.S.C. § 3602(i).

The Government contends (at 15-16) that this definition departs from the "customary meaning" of "aggrieved" because the "injury does not need to be associated with a particular legal interest." But the FHA defines a "discriminatory housing practice" as "an act that is *unlawful* under section 3604, 3605, 3606, or 3617 of this title." 42 U.S.C. § 3602(f) (emphasis added). Thus, "one is aggrieved only when 'suffering from an infringement or denial *of legal rights*' "—the very meaning the Government (at 15) considers "customary."

The Government also contends (at 17 n.4) that the FHA differs from other statutes because "it refers to any person *who claims to have been* injured." But Title VII likewise authorizes suit by "a person *claiming* to be aggrieved." 42 U.S.C. § 2000e-5(b) (emphasis added). And the Lanham Act similarly authorizes suit by "any person *who believes that he or she is likely* to be damaged." 15 U.S.C. § 1125(a) (emphasis added). The FHA cannot be distinguished from those statutes, which impose a zone-of-interests limitation. *See Thompson*, 562 U.S. at 177; *Lexmark*, 134 S. Ct. at 1388-1389.

The City cites two other purported differences between Title VII and the FHA. First, it asserts (at 28) that Title VII "hinges heavily" on discriminatory "motive[s]," while the FHA "focuses on results." But both statutes contain "results-oriented language," authorizing disparate-impact claims. *Tex. Dep't of Hous. & Cmty. Affairs* v. *Inclusive Cmtys. Project, Inc.*, 135 S. Ct. 2507, 2516-2519 (2015). And in any event, that language concerns only *what* is prohibited, not *who* may sue.

Second, the City emphasizes the FHA's declared purpose "to provide, *within constitutional limitations*, for fair housing throughout the United States." 42 U.S.C. § 3601 (emphasis added). But Congress added those italicized words merely to acknowledge that, in regulating private transactions, it was legislating within its enumerated powers—*i.e.*, "within constitutional limitations *upon Congress*." 114 Cong. Rec. 4985 (1968) (statement of Sen. Miller) (emphasis added).

Thus, with respect to who may sue, Title VII and the FHA are virtually identical. And any textual differences certainly do not *expressly negate* the zone-of-interests limitation.

2. Thompson *properly disregarded the dicta in the older FHA cases*

The City (at 25) and the Government (at 12-13) also read *Trafficante*, *Gladstone*, and *Havens* as *holding* that anyone with Article III standing can sue under the FHA. *See Trafficante* v. *Metro. Life Ins. Co.*, 409 U.S. 205 (1972); *Gladstone, Realtors* v. *Village of Bellwood*, 441 U.S. 91 (1979); *Havens Realty Corp.* v. *Coleman*, 455 U.S. 363 (1982). But just six Terms ago, a unanimous Court in *Thompson*

considered—and rejected—that reading of those older decisions. 562 U.S. at 176-177; *see* Pet. Br. 36-37, *Thompson*, *supra* (arguing that the statement in *Trafficante* was a holding); U.S. Br. 18, *Thompson*, *supra* (arguing that *Gladstone* "permit[ted] all plaintiffs with Article III standing to bring suit").

The Government insists (at 8-9) that all eight Justices in *Thompson* were simply "wrong." But it agrees (at 19) that the "results" of the older FHA cases are "compatible" with a zone-of-interests limitation narrower than Article III. And that fact makes each case's statements about the FHA extending to Article III "unnecessary to the decision"—the very definition of dicta. *McDaniel* v. *Sanchez*, 452 U.S. 130, 141 (1981).

In any event, the Government should not be permitted to relitigate *Thompson*. If, as the Government says (at 9), the "holding of a case includes its rationale," then the holding of *Thompson* includes its rejection of the statements in the older FHA cases as dicta. After all, *Thompson* presumed that Title VII and the FHA should be given the same meaning. 562 U.S. at 176-177 So if the older statements about the FHA were holdings, the Court would have felt bound to apply them to Title VII. *See id.* at 177 (rejecting an interpretation of Title VII that "contradict[ed] the very holding of *Trafficante*"). *Thompson*'s conclusion that those statements were dicta was thus central to its rationale. And under the Government's own definition, that itself is a holding, which should not be reopened for debate.

The City contends (at 30) that even if the older statements were dicta, the Court should give them "precedential" weight. But this Court is "not neces-

sarily bound by dicta should more complete argument demonstrate that the dicta is not correct." *Kirtsaeng* v. *John Wiley & Sons, Inc.*, 133 S. Ct. 1351, 1368 (2013). *Trafficante*'s analysis of whether "aggrieved" extends to Article III consisted entirely of a quotation from a lower court's decision regarding Title VII. 409 U.S. at 209. Later opinions simply "reiterate[d]" that passage, without recognizing that not even *Trafficante* had "adhere[d] to it" in expressing its "holding." *Thompson*, 562 U.S. at 176. It was not until *Thompson* that this Court "canvas[sed] the [relevant] considerations." *Kirtsaeng*, 133 S. Ct. at 1368. And because "more complete argument demonstrate[d] that the dicta is not correct," the dicta should be discarded. *Id.*

Even if the older statements were precedent, they should be overruled. Although this Court is "normally and properly reluctant to overturn [its] decisions construing statutes, [it has] done so to achieve a uniform interpretation of similar statutory language." *Rodriguez de Quijas* v. *Shearson/Am. Express, Inc.*, 490 U.S. 477, 484 (1989). It should do so here to achieve a uniform interpretation of the FHA, the APA, Title VII, and statutes that cross-reference Title VII, including the Americans with Disabilities Act. *See Thompson*, 562 U.S. at 177-178; 42 U.S.C. § 12117(a). Moreover, "the Court has not hesitated to overrule an earlier [statutory] decision" where there has been an "intervening development of the law," *Patterson* v. *McLean Credit Union*, 491 U.S. 164, 173 (1989)—here, *Thompson*. And by overruling its earlier statements, this Court would not undermine the outcomes of those older cases or harm reliance interests. That is because those outcomes "are compatible with the 'zone of interests' limita-

tion," *Thompson*, 562 U.S. at 176, and because, as the City acknowledges (at 2), municipalities have "infrequently" brought suits like this anyway. Whether dicta or not, this Court's older statements should not stand in the way of the best interpretation of the FHA.

3. Congress did not ratify the dicta in the older FHA cases

The City (at 25-26) and the Government (at 14) contend that Congress in 1988 ratified this Court's older statements that "aggrieved" in the FHA extends as far as Article III. They do not dispute, however, that the ratification canon applies only to *holdings*. *See Jama* v. *Immigration & Customs Enforcement*, 543 U.S. 335, 351 & n.12 (2005). As *Thompson* explained, the Court's older statements were *dicta*. 562 U.S. at 176-177 Thus, Congress cannot be said to have ratified them.

But even if the Court's statements were holdings, or even if they were sometimes described as such, *see* U.S. Br. 19, the ratification argument would still fail, for two reasons.

First, the ratification canon is a canon about Congress's *subjective* intent, and aside from the statutory text itself, the best evidence of that intent is the contemporaneous House Report. The City (at 24) and the Government (at 14) quote the last sentence of the report's relevant paragraph, which states that the 1988 amendments "reaffirm the broad holdings" of *Gladstone* and *Havens*. H.R. Rep. No. 100-711, at 23 (1988). But they never acknowledge the two sentences that come before, which describe precisely which "holdings" the report has in mind: *Gladstone*'s holding that "standing requirements for judicial and

administrative review are identical under [the FHA]," and *Havens*'s holding that "'testers' have standing to sue." *Id.* The report thus tells us exactly what Congress meant to ratify. *See United States* v. *Am. Coll. of Physicians*, 475 U.S. 834, 845-846 (1986). And it never mentions anything about "aggrieved" extending to Article III.

The City (at 26) points to a bill introduced by Senator Hatch in 1987, which would have limited "aggrieved persons" under the FHA to persons discriminated against in "bona fide" housing transactions. Equal Access to Housing Act of 1987, S. 867, 100th Cong. § 5(b). Congress did not adopt that bill. But Senator Hatch's proposed definition of "aggrieved person" would have been far narrower than any zone-of-interests limitation, so the failure to adopt it cannot be understood as a rejection of such a limitation. *See Cent. Bank of Denver, N.A.* v. *First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 187 (1994) ("[F]ailed legislative proposals are a particularly dangerous ground on which to rest an interpretation of a prior statute." (internal quotation marks omitted)). Moreover, the fact that Senator Hatch himself later co-sponsored the 1988 amendments confirms that those amendments did not ratify the broadest possible definition of "aggrieved person." 134 Cong. Rec. 19,711 (1988).

Second, the ratification canon is a canon about what Congress "*impliedly* approved." *Jama*, 543 U.S. at 351 (emphasis added) (internal quotation marks omitted). The zone-of-interests limitation, however, applies unless "*expressly* negated"—a far higher bar. *Lexmark*, 134 S. Ct. at 1388 (emphasis added) (internal quotation marks omitted). The ratification canon cannot meet that bar, and the City

and the Government do not even attempt to explain how it could. The "unlikelihood that Congress meant to allow all factually injured plaintiffs to recover" is simply too great for the ratification canon to overcome. *Id.* (internal quotation marks omitted).

B. The City Here Is Beyond The Zone Of Interests

The City (at 31-35) and the Government (at 21-28) contend that even if the FHA's zone of interests is narrower than Article III, the City's alleged injuries fall within it. They make three arguments: (1) any injury that results from discrimination is within the zone; (2) cities can always sue because, as governmental entities, they have an interest in fair housing; and (3) the City's interests here are analogous to interests recognized in this Court's precedent and the FHA's legislative history. None has merit.

1. The City contends (at 35) that it falls within the zone of interests because its complaint contains "allegations of discriminatory conduct." The Government agrees (at 27): "When [a plaintiff's] injuries result from discrimination, they are within the statute's zone of interests."

That cannot be the test. Every plaintiff must allege "injuries [that] result from discrimination" in order to plead a statutory violation and Article III standing. Were such allegations enough to bring a plaintiff within the FHA's zone of interests, the zone-of-interests limitation would be no limitation at all; "all factually injured plaintiffs [could] recover." *Lexmark*, 134 S. Ct. at 1388 (internal quotation marks omitted). The zone-of-interests limitation requires more—that "the injury [the plaintiff] complains of (*his* aggrievement, or the adverse effect

upon him) falls within the 'zone of interests' sought to be protected by the [statute]." *Lujan* v. *Nat'l Wildlife Fed'n*, 497 U.S. 871, 883 (1990).

2. The City next contends (at 2, 31, 37) that cities are governmental entities with an "interest in fair housing"—which supposedly distinguishes them from shareholders, dry cleaners, bowling alleys, and other private persons. The City implies that because of their governmental status, cities can always sue to enforce FHA violations involving their residents.

But Congress did not assign cities any special *parens patriae* role in enforcing the FHA. The statute contains no "Enforcement by cities" provision. A city must sue as an "aggrieved person," under a provision entitled "Enforcement by *private* persons." 42 U.S.C. § 3613(a)(1)(A) (emphasis added). And that provision allows cities to sue only because the term "person" is defined to include "corporations," *id.* § 3602(d), which in turn has been construed to include *municipal* corporations. *See Gladstone*, 441 U.S. at 109 n.21; *cf.* 42 U.S.C. § 2000e (expressly including "governments, governmental agencies, [and] political subdivisions" in Title VII's definition of "person"). Congress thus did not accord cities, as distinguished from other "corporations" or "private persons," any special solicitude as FHA plaintiffs.

By contrast, when Congress meant to give a governmental entity a special role in enforcing the FHA, it did so explicitly—to HUD and DOJ. *See* 42 U.S.C. § 3610 ("Administrative enforcement"); *id.* § 3612 ("Enforcement by Secretary"); *id.* § 3614 ("Enforcement by Attorney General"). Notably, Congress also empowered HUD to refer complaints to state and local public agencies—thereby giving cities an oppor-

tunity to enforce *their own* fair housing laws. *Id.* § 3610(f). In that respect, Congress *did* recognize the importance of fair housing to cities. But Congress did not give cities a roving commission, unique among "persons," to enforce the FHA.

This does not mean that cities may never sue under the FHA. But it does mean that in order to sue, a city cannot simply invoke its status as a governmental entity. Rather, a city must meet the same requirements as any other "person." And that means, to fall within the statute's zone of interests, it must plead more than an "abstract" interest in fair housing. *Havens*, 455 U.S. at 379; *see also Sierra Club* v. *Morton*, 405 U.S. 727, 739 (1972) ("a mere 'interest in a problem' * * * is not sufficient by itself"). It must plead that *its own* interest in non-discrimination was "*actually* affected." *Nat'l Wildlife Fed'n*, 497 U.S. at 886 (emphasis added).

3. The City contends (at 19-21) that it has done so by pleading injuries akin to those in *Gladstone*, the legislative history, and *Havens*. That is incorrect.

a. In *Gladstone*, the realtors' practice of steering blacks toward a neighborhood while steering whites away "affect[ed] the village's racial composition," turning an "integrated neighborhood" into a "segregated one." 441 U.S. at 110. That was the village's *injury*—a decrease in racial integration that depended on the discriminatory nature of the realtors' conduct. And *Gladstone* suggested that the village's *damages*—its "harms flowing from the realities of a *racially segregated* community"—could be measured in terms of a "reduction in property values" and a "diminish[ed]" "tax base." *Id.* at 110-111 (emphasis added).

The City contends (at 19) that it has suffered a reduction in property values and a diminished tax base, too. But in *Gladstone*, those things were the "consequences" of an injury to "the village's racial composition"—an injury squarely within the FHA's zone of interests. 441 U.S. at 110; *see* WF Br. 32. The City here has not alleged any such injury. There is no allegation that the racial composition of the City, or even one of its neighborhoods, has been affected at all. Whether the alleged discrimination caused the City to become more segregated, become more integrated, or stay the same, the complaints never say. *See* WF Br. 34-35. Unlike in *Gladstone*, the loss of property-tax revenues is not just a measure of damages; it is the City's injury itself. J.A. 334, 417. And that injury is purely financial, affecting only the City's interest in protecting its coffers.

If the City is analogous to anyone, it is not the village in *Gladstone*, but the hypothetical shareholder in *Thompson*, who suffers a drop in stock price when the company fires a valuable employee. *Thompson*, 562 U.S. at 177. To the shareholder, the race of that employee does not matter; the shareholder would suffer the same financial injury regardless of whether the employee was black, white, or Latino. Thus, the shareholder falls outside the zone of interests; his injury does not depend on the discriminatory nature of the company's conduct. That is equally true of the City here: If the same homes had been foreclosed upon but their owners had been white, the City would have suffered the same injuries.

b. The City (at 14-15) and the Government (at 21-22) also argue that the City's injuries are similar to those discussed in the Kerner Commission Report and the legislative history. But the Commission

identified a broad social problem—racial segregation—and proposed a variety of reforms. *Report of the National Advisory Commission on Civil Disorders* 11-13 (Mar. 1, 1968) (Kerner Report). As just one of those reforms, the FHA was not meant to tackle every problem the Commission identified.

Moreover, as in *Gladstone*, the harms identified by the Commission and various legislators all "flow[ed] from the realities of a *racially segregated* community." 441 U.S. at 110-111 (emphasis added); *see* 114 Cong. Rec. 2274 (1968) (statement of Sen. Mondale) (discussing the "failure to put an end to segregated housing"); *id.* at 2988 (statement of Sen. Brooke) (suggesting that "[a]s segregation continues to grow," cities might "find themselves less and less able to cope with their problems"); *id.* at 2993 (statement of Sen. Mondale) (describing "the problem of segregated housing"); Kerner Report, *supra*, at 5 (attributing "deteriorating facilities and services" to "*[b]lack in-migration and white exodus*"); *id.* at 10 (warning of "further deterioration of already inadequate municipal tax bases" if the Nation fails "to achieve an integrated society"); *id.* at 13 (denouncing "prevailing patterns of racial segregation"). And there is no dispute that if housing discrimination affected a city's racial composition—causing it to become racially segregated—a city could seek damages for that injury. As explained, however, the City has alleged no such injury here.

c. Finally, the City maintains (at 36) that it is "no differen[t]" from the nonprofit organization in *Havens*. But though both the City and the organization assert an interest in fair housing, only the organization alleged that its interest was "*actually* affected." *Nat'l Wildlife Fed'n*, 497 U.S. at 886 (emphasis

added). As *Havens* explained, the organization alleged that it had "devote[d] significant resources to identify and counteract *the defendant's* racially discriminatory steering practices." 455 U.S. at 379 (emphasis added) (internal quotation marks and alteration omitted). And it sued to recover those precise resources spent on "testing and monitoring defendants' practices." App. 20, *Havens*, *supra*.[1]

The City has not alleged that it devoted any resources to combatting *Wells Fargo's* alleged conduct; it alleges only the existence of a Department of Community and Economic Development, which deals with fair housing in general. J.A. 417. And the millions of dollars the City seeks in damages, J.A. 429, have nothing to do with the "expenses of testing and monitoring." App. 20, *Havens*, *supra*. Regardless of whether a city *could* plead injuries like the organization in *Havens*, the City has not done so here.

* * *

Because the City here has not pleaded any injury protected by the FHA, it has no cause of action—whether for declaratory, injunctive, or monetary relief.

---

[1]Since *Havens*, nonprofit organizations have similarly sought damages incurred in combatting the defendant's specific discriminatory acts. *See, e.g.*, *Fair Hous. of Marin* v. *Combs*, 285 F.3d 899, 905 (9th Cir. 2002) (affirming $24,377 award for resources "diverted to investigating and other efforts to counteract [defendant's] discrimination"); *United States* v. *Balistrieri*, 981 F.2d 916, 933 (7th Cir. 1992) (affirming $5,000 award for "time and money [that] was deflected to legal efforts" fighting defendant's discrimination).

That is not to say that no one could sue to challenge the alleged discrimination in this case. Individual loan recipients could sue, and even seek to band together in a class action. The FHA's fee-shifting provision, 42 U.S.C. § 3613(c)(2), encourages them to act as private attorneys general. Nonprofit organizations could also sue, just as in *Havens*. And governmental entities could pursue claims, too. HUD could file an administrative complaint. *Id.* § 3610(a), (f). Or DOJ could sue in court, *id.* § 3614, which it has already done, *see supra* pp. 2-3.

II. THE ASSERTED FHA VIOLATIONS DID NOT PROXIMATELY CAUSE THE CITY'S ALLEGED INJURIES

Proximate cause is a separate limitation that independently dooms the City's complaint. *See Lexmark*, 134 S. Ct. at 1388. The City concedes that the FHA incorporates a proximate-cause requirement. City Br. 38; U.S. Br. 29. And rightly so: This Court has made clear that proximate cause is the default rule, absent contrary instructions from Congress. *Lexmark*, 134 S. Ct. at 1390.

The remaining questions, then, are *what* proximate cause requires and *whether* the City has pleaded a sufficiently tight causal relationship. On the first question, the City reduces proximate cause to a blinkered version of foreseeability, whereby each link in the causal chain must simply predict the next. But that test ignores this Court's guidance on proximate cause and does next to nothing to limit the class of potential FHA plaintiffs. On the second question, the City asserts that it is a direct victim. But the injuries it actually claims are several steps away from any discrimination; they violate the

"general" rule that proximate cause cuts off liability after the "first step." *Id.* at 1394 (internal quotation marks omitted).

1. In federal statutes, proximate cause serves a dual function, precluding recovery for both bizarre and remote injuries. WF Br. 38-41. The City appears to embrace the "bizarre" limit only. It suggests (at 47-48) that proximate cause is satisfied so long as (1) discrimination foreseeably caused foreclosures, and (2) the plaintiff was foreseeably harmed by the foreclosures. That watered-down test contravenes this Court's precedents, which assess the directness of the claimed injuries and explain that plaintiffs generally may not recover for derivative ones. *See* WF Br. 39, 42-43.

The City has no answer to those precedents. Start with *Lexmark*. *Lexmark* explained that proximate cause "bars suit for alleged harm that is too remote," and that anything after the "first step" is typically too remote. 134 S. Ct. at 1390, 1394 (internal quotation marks omitted). Still, in "relatively unique circumstances"—like a near-perfect "1:1 relationship" between the injury and the violation—a derivative injury might be viable. *Id.* at 1394. Contrary to the City's assertion (at 53), its derivative injuries are not a perfect 1-to-1 match with the FHA violations, or an "integral * * * aspect of the violation alleged." *Lexmark*, 134 S. Ct. at 1394 (internal quotation marks and brackets omitted). Under *Lexmark*'s own terms, they cannot be: The City stands in the same position as the landlord that *Lexmark* offered as a prototypical plaintiff who *cannot* satisfy proximate cause. *Id.* at 1391; *see* WF Br. 48.

Nor does the City explain why it is any different from the city in *Hemi Group, LLC* v. *City of New York*, 559 U.S. 1 (2010). *See* WF Br. 49. It instead tries (at 51-52), without success, to distinguish RICO from the FHA. To start, the City argues that RICO's language borrows from the Sherman Act, which accounts for directness. But the Sherman Act itself contains broad language, which courts have read "to incorporate common-law principles of proximate causation." *Holmes* v. *Sec. Inv'r Prot. Corp.*, 503 U.S. 258, 267 (1992). The City next argues that RICO requires directness because remote harms may be difficult to attribute to a RICO violation. Yet that same problem applies in the FHA context. The City's rejoinder that its experts can bridge the gap in this *particular* case, even if true, does not eliminate the difficulties inherent in parsing long causal chains. Finally, the City asserts that, in contrast with RICO victims, directly injured FHA victims have fewer incentives to enforce the statute. The City ignores, though, the FHA's fee-shifting provision. 42 U.S.C. § 3613(c)(2). It also ignores class-action attorneys, nonprofit organizations, and federal enforcers—all of whom can be "counted on to vindicate the law * * * without any of the problems attendant upon suits by plaintiffs injured more remotely." *Holmes*, 503 U.S. at 269-270. And it ignores that DOJ has already brought a suit challenging the very lending practices alleged here.[2]

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[2]The Government (at 32) tries its hand, too, claiming that FHA suits by indirect victims would not lead to overlapping damages. It is easy to think of contrary examples: Take a city that loses $50,000 in property-tax revenues and thus fires an

Instead, the City cites (at 43) a few cases discussing foreseeability. Wells Fargo has never argued that foreseeability is irrelevant to the proximate-cause inquiry. To the contrary, its opening brief explained why cases like *Paroline* v. *United States*, 134 S. Ct. 1710 (2014), where an immediate victim suffers a variety of harms, gravitate toward foreseeability language. WF Br. 38-39. In cases like this one, where a distant victim sues for derivative injuries, directness is the more relevant construct. *Id.* at 39-40. Several of the City's cases in fact employ the latter framework. *See, e.g.*, *Sosa* v *Alvarez-Machain*, 542 U.S. 692, 704 (2004) (assessing whether actors were "close enough to the harm"); *Blue Shield of Va.* v. *McCready*, 457 U.S. 465, 479 (1982) (assessing whether injury was too "remote").

2. The City tries to buttress its flawed legal analysis by pointing to various statistical tools. It emphasizes its experts' "rigorous" regression analyses, arguing (at 38-40) that they demonstrate a disparity in loan terms. Wells Fargo certainly disputes the "rigor[]" of this evidence. But more to the point, such evidence is irrelevant: It goes to the question of *actual* (or *but-for*) cause, not *proximate* (or *legal*) cause. *See Paroline*, 134 S. Ct. at 1719. Put differently, even if the regression analyses could prove that the alleged FHA violations were "one of the causes of the plaintiff's injury," "there remains the question whether the defendant should be legally responsible for the injury." W. Page Keeton et al.,

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employee who makes $50,000; both the city and the employee might sue for the same $50,000 of damages.

Prosser and Keeton on the Law of Torts § 42, at 272-273 (5th ed. 1984). That is the question here.

The City (at 45-49) also relies on various risk-management tools, which it claims could have been combined with a few publicly available studies to predict the loan defaults and their effects. But even if predictability were enough to satisfy foreseeability, *but see* WF Br. 41 n.7, that would not make the City's financial injuries any less attenuated—just as its preferred study's discussion of how foreclosures hurt "nearby property owners, businesses, and others with financial interests" cannot make those persons' injuries any less attenuated. William C. Apgar et al., *The Municipal Costs of Foreclosures: A Chicago Case Study* 10 (2005). These tools and studies cannot solve the City's *directness* problem.

3. The Government takes a different tack. It agrees that *Lexmark* requires a "sufficiently close connection" to the statutory violation—that is, directness. 134 S. Ct. at 1390. It argues instead that injuries are never too attenuated if they are "of the kind that the 'statute intended to protect' against." U.S. Br. 30. True enough, effectuating legislative purpose is one function of the directness component of proximate cause. WF Br. 43. But that general principle does not help the Government here.

Lexmark instructed how to discern whether a statute protects a specific class of plaintiffs: by reading the statute. Because "the Lanham Act authorizes suit only for commercial injuries," a commercial plaintiff could satisfy proximate cause where the defendant's "deception of consumers causes them to withhold trade from the plaintiff." 134 S. Ct. at 1391; *see* WF Br. 33-34. The Government offers no

comparable evidence that the FHA authorizes suit by cities that suffer the financial injuries asserted here. It points (at 30) to two snippets of legislative history—a few words about deteriorating urban conditions in the Kerner Report, and a similar comment by one legislator. Even assuming that such legislative history could inform the proximate-cause inquiry, neither snippet suggests that a city's downstream injuries are recoverable in litigation.

The Government's sweeping argument would thus strip *Lexmark*'s "first step" inquiry of any real force: Locate a bit of legislative history mentioning a certain type of entity, and proximate cause can be dispensed with altogether. To illustrate, the Kerner Report says that the same segregated conditions that harmed cities also harmed "[s]tores of all kinds," and resulted in "lost revenue" to "[h]undreds of businesses" and "lost wages" to "thousands of citizens." Kerner Report, *supra*, at 197 If a bare appearance in the legislative history suffices, local businesses and their employees could sue—which the City and the Government do not dispute would be absurd.

4. In the end, the City is left with *Gladstone* and *Havens*. City Br. 41-42; U.S. Br. 30-31. Yet neither *Gladstone* nor *Havens* addressed proximate cause at all. Although *Havens* mentioned "direct" and "indirect" injuries, it did so only in the context of describing the types of victims with Article III standing. 455 U.S. at 375. It did not analyze which victims stood at the "first step" from an FHA violation for proximate-cause purposes.

Even if relevant to the proximate-cause inquiry, *Gladstone* and *Havens* do not support the City here. In *Gladstone*, the village alleged that the defendants

had "manipulate[d] the housing market" by "replacing" "an integrated neighborhood with a segregated one." 441 U.S. at 109-110. Because "the village's racial composition" was under attack, *id.* at 110, the village was injured at the first step. Only then did *Gladstone* propose diminished property-tax revenues as a measure of *damages* to compensate the village for its direct *injury*. *See id.* at 110-111. The loss of property-tax revenues, in other words, was one possible way of quantifying the injury; it was not the underlying injury itself. *See Story Parchment Co.* v. *Paterson Parchment Paper Co.*, 282 U.S. 555, 562-563 (1931) (embracing the "clear distinction" between the fact of an injury and the quantity of damages, and requiring only a "just and reasonable inference" of "the extent of the damages").

Here, conversely, the loss of property-tax revenues (or increase in municipal spending) *is* the City's asserted injury. And that injury occurs well after the first step. Just compare the Government's description of the causal chain in *Gladstone* with its description of the causal chain in this case. In *Gladstone*, the village appears in the *very first* link: "The discriminatory conduct allegedly affected the *village's* racial composition," and so on. U.S. Br. 30 (emphasis added). Here, the City does not appear until the *sixth and final* link. The alleged discrimination affects (1) "loan terms," then (2) "defaults," then (3) "foreclosures," then (4) "vacancies," then (5) "property values"—all before finally affecting (6) "the *municipality's* tax base" and "ability to provide services." *Id.* at 30-31 (emphasis added). For proximate-cause purposes, the City's injury occurs many leaps beyond the first step.

Havens does not add much to the analysis. As explained, a nonprofit organization—or indeed, a *city*—that seeks damages for specific outlays combatting a defendant's discrimination will typically demonstrate the unique 1-to-1 correlation sufficient to establish proximate cause. WF Br. 45-46; *see Lexmark*, 134 S. Ct. at 1394. Although the City claims (at 45) that it "stands in similar shoes to a non-profit," it has not alleged that it spent any specific resources combatting the asserted discrimination, or that it must devote specific resources in the future to counteract the effects of that discrimination. *See supra* p. 15. In fact, it has not identified *any* relationship—let alone a proximate one—between Wells Fargo's actions and the City's fair-housing efforts.

Taking a step back, this Court's precedents illustrate that a city might stand at three different distances from FHA violations. *First*, it might be *immediately* injured by racial steering, as in *Gladstone*. *Second*, it might suffer an *integrally related* injury from allocating specific resources to combat the defendant's discrimination, as in *Havens*. Or *third*, it might be *indirectly* injured when discrimination against individuals has financial effects that reverberate outward, as alleged here. The first two satisfy proximate cause; the third does not.

5. Finally, the City's stripped-down version of proximate cause would "hardly [be] a condition at all." *Consol. Rail Corp.* v. *Gottshall*, 512 U.S. 532, 553 (1994). Both the City and the Government appear to acknowledge the absurdity of allowing other indirect victims to recover: flower shops, dry cleaners, city employees, and so forth. Yet they address the absurdity only by pointing to *other* statutory limitations. The City, for example, relies

(at 44) on the zone of interests—though, of course, it believes there is none. And the Government (at 33) mentions other ubiquitous requirements, like complying with the statute of limitations and presenting evidence. No doubt those are constraints on successful lawsuits. They are unresponsive, though, to the fundamental problem: that the City's theory would render the proximate-cause requirement a virtual nullity.

CONCLUSION

The judgment of the Court of Appeals should be reversed.

Respectfully submitted,

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and WELLS FARGO BANK, N.A.,
Petitioners,

v.

CITY OF MIAMI,
Respondent.

On Writ of Certiorari to
the United States Court of Appeals
for the Eleventh Circuit

BRIEF AMICUS CURIAE OF URBAN HISTORIAN LEO HOLLIS IN SUPPORT OF RESPONDENT

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IDENTITY AND INTEREST OF AMICUS CURIAE[1]

Amicus Curiae Leo Hollis is an urbanist, historian, and author with a deep interest in the social future of the city. He has written numerous books and articles exploring and addressing how cities can impact society. His most recent book, *Cities Are Good for You: The Genius of the Metropolis*, which discussed how cities can be a source of great good in our society, was an international bestseller. Hollis studies and explores how cities can deliver a better life and a better world. He has investigated how cities all over the world are tackling diversity, segregation, climate change, population growth, poverty, shifting work patterns, and the maintenance of the fragile trust of their citizens. He has been invited to talk on urban matters around the world, and frequently writes articles discussing the role of the city in shaping human society. He is a strong advocate for the protection of everyone's right to enjoy the benefits that come from the urban experience.

As an expert in the field of urbanism and urban studies, *Amicus* is uniquely qualified to address the interconnectedness of all aspects of a city. His knowledge brings an important perspective on the

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[1] Each party has consented to the filing of this brief, and copies of the consents have been lodged with the Clerk of the Court. Pursuant to this Court's Rule 37.6, *Amicus* states that this brief was not authored in whole or in part by counsel for any party and that no person or entity other than *Amicus* or its counsel made a monetary contribution intended to fund the preparation or submission of this brief.

extent to which Wells Fargo was materially involved in the worsening of the city during the period it aggressively sold bad loans to predominantly Black and Hispanic customers. Not only were these practices racially discriminatory, but the policy as whole had a widespread impact on the social fabric of the city.

We submit this brief in support of respondents in order to respectfully urge this Honorable Court to uphold the decision of the United States Court of Appeals for the Eleventh Circuit, and find that the City of Miami is an aggrieved party within the meaning of the Fair Housing Act, and that protecting citizens from the adverse health and economic consequences associated with predatory lending practices is within the City's zone-of-interests.

SUMMARY OF ARGUMENT

For much of its history Miami, like many other American municipalities, was segregated along color lines. By law and by custom, the city enforced policies and engaged in practices that not only denied families and individuals the right to live where they chose, but also and more significantly resulted in the racial and ethnic balkanization of neighborhoods and communities. Congress enacted The Fair Housing Act ("FHA") as a corrective to these policies and practices. In the last fifty years, Miami, thanks in part to the FHA, has made enormous progress in racial integration and diversity. In the process, the City has slowly healed itself, becoming a more welcoming and healthier place for individuals and families of diverse races and backgrounds. By

engaging in mortgage lending practices that resulted in a disproportionate and excessive number of defaults by minority homebuyers, Wells Fargo has set back that healing. The most obvious harmful consequence of Wells Fargo's actions was a loss in residential property values and a reduction of the municipal tax base. But the deeper and potentially more devastating harm Wells Fargo visited upon Miami was to the very physical essence of the city.

ARGUMENT

I. WELLS FARGO'S RACIALLY DISCRIMINATORY ACTIONS INJURED THE ESSENTIAL COMMUNAL CHARACTER OF THE CITY OF MIAMI

The City of Miami has suffered as a result of Wells Fargo's predatory lending and discriminatory practices, but this harm is so much more than just lost taxes and decreased home prices. Wells Fargo has attacked the very essence of the City of Miami, and all citizens of the city are harmed along with it. Because of Wells Fargo's actions, families were forced out of their neighborhoods, children had to leave their schools, and citizens lost their sense of community; in short, the City lost a part of itself. The City itself was harmed.

A. A City Is a Living, Breathing Organism, Singular in Its Customs and Traditions, and Unique in Its Nature and Personality.

"Omnis civitas corpus est," St. Augustine teaches us, "Every city is a [living] body."[2] It is "something more than the congeries of individual men and of social conveniences – streets, buildings, electric lights, tramways, and telephones, etc.; something more, also, than a mere constellation of institutions and administrative devices – courts, hospitals, schools, police, and civil functionaries of various sorts."[3] Like all living things, a city is "a state of mind, body of customs and traditions, and of organized attitudes and sentiments that inhere in these customs and are transmitted with this tradition."[4] In other words, a city is not "merely a physical mechanism and an artificial construction. It is involved in the vital processes of the people who compose it; is a product of nature, and particularly of human nature."[5]

Life pulses through the very air of a city, a feeling of connection that inexplicably links perfect strangers who join together to become part of the city. Like people, cities have their own uniqueness, their own smells, their own tastes, their own sounds. Being in London feels different than being in New York, Paris is easily distinguishable from Los

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[2] Alexandre Dumas, *La Dame de Monsoreau* 246 (Boston, Estes and Lauriat 1893).

[3] Robert E. Park & Ernest W. Burgess, *The City* 1 (1925).

[4] *Id.*

[5] *Id.*

Angeles, Rome is not Sao Paulo. To spend any time in a city is to recognize its unique nature and inimitable sensations. Cities are more than inanimate sidewalks and streets, more than businesses and buildings, cities are alive. "The city is an organism; it has its own special powers; and over time the whole becomes more powerful than the sum of its parts. The complex city cannot be defined by a catalogue of its elements."[6]

Cities are small miracles – each singular, each with its own special personality. We speak and write and sing of cities as we do of loved ones. Ancient Greeks believed that cities had their own 'tyche' or 'conscienceness of place' often in the form of a city god or goddess. In Rudyard Kipling's The Song of Cities,[7] each city is personified, speaking of its own attributes and achievements. In modern culture, we sing of the cities we live in, from Frank Sinatra's "New York New York"[8] to Tony Bennett's I left My heart in "San Francisco,"[9] from Eminem's "8 Mile"[10] to Bruce Springsteen's "Streets of Philadelphia,"[11] from the Mamas and the Papas' "California Dreaming" [12] to Robert Johnson's "Sweet Home

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[6] Leo Hollis, *Cities Are Good for You: The Genius of the Metropolis* 24 (2013).

[7] Rudyard Kipling *Rudyard Kipling's Verse: Inclusive Edition 1885-1918* 200-03 (1922).

[8] Frank Sinatra, *New York New York* (Reprise Records 1979).

[9] Tony Bennett, *I Left My Heart in San Francisco* (Columbia Records 1962).

[10] Eminem, *8 Mile* (Interscope Records 2003).

[11] Bruce Springsteen, *Streets of Philadelphia* (Columbia Records 1994).

[12] The Mamas and the Papas, *California Dreaming* (Dunhill Records 1965).

Chicago,"[13] from Elvis Presley's "Viva Las Vegas,"[14] to Will Smith's "Miami."[15] In our imagination, the city becomes a partner, a friend, an object of longing and affection:

Sometimes I feel
Like I don't have a partner
Sometimes I feel
Like my only friend
Is the city I live in...
At least I have her love
The city she loves me[16]

Even modern scientists study cities as actual living entities, using theories of biology, and applying them to cities and urban growth, and finding that, "the city itself can be viewed as an organism with a metabolism that can be studied."[17] Scientists have examined cities and found that the way in which a city develops follows universal laws that govern the growth all organic systems. Geoffrey West, a theoretical physicist, and one of the leading scientists working on a scientific model of cities spoke to this phenomenon, saying, "[w]hat was discovered was that [cities] behaved sort of like biology." [18]

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[13] Robert Johnson, *Sweet Home Chicago* (Vocalion 1937).
[14] Elvis Presley, *Viva Las Vegas* (RCA Records 1964).
[15] Will Smith, *Miami* (Sony Records 1998).
[16] Red Hot Chili Peppers, *Under the Bridge* (Warner Bros. 1992).
[17] Thomas E. Graedle, *Industrial Ecology and the Ecocity*, 29 The Bridge 10, (1999).
[18] *WHY CITIES KEEP GROWING, CORPORATIONS AND PEOPLE ALWAYS DIE, AND LIFE GETS FASTER A Conversation With Geoffrey West [5.23.11]*, Edge (May 23, 2011), https://www.edge.org/conversation/geoffrey-west.

Essentially, science has now proven that cities are in fact alive, and not just in a metaphorical sense, but in a very real and identifiable way.

Because a city is so much more than just a collection of buildings and streets, the harm that Wells Fargo caused the City of Miami is so much more than the economic damage to those buildings and streets and the lost taxes related thereto. Wells Fargo attacked the living body and harmed the very physical self of the city.

B. A City is the Sine Qua Non of Culture, Without Which Human Experience Would be Devoid of Community, Philosophy, Religion, Science, and Art

"All the good things of the earth flow into [the] city,"[19] Pericles of Ancient Athens once said. Here in America, the city "should be a collection of communities where every member has a right to belong.... It should be a place where each of us can find the satisfaction and warmth which comes from being a member of the community of man."[20] A city is a place for people. In other words, a city's purpose, the very reason for its existence, is to bring people together. Indeed, according to historian and

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[19] Donald Kagan, *Pericles of Ancient Athens and the Birth of Democracy* 110 (1998).

[20] Lyndon B. Johnson, U.S. President, Special Message to Congress on the Nation's Cities (March 2, 1965) *in Public Papers of the Presidents of the United States: Lyndon B. Johnson book 1* 240 (1965).

sociologist Lewis Mumford, to a large extent, cities are what make us "fully humanized."[21]

Cities like Miami make us better. They expose us to other viewpoints, to other people, and to other ideas. Like a loving parent, the city embraces us and helps us learn and grow, creating a space for culture and experience; cities present us with opportunities that open our eyes, minds, and hearts. In that way, the city is the pinnacle of human society and civilization:

> The city. as one finds it in history, is the point of maximum concentration for the power and culture of a community. It is the place where the diffused rays of many separate beams of life fall into focus, with gains in both social effectiveness and significance. The city is the form and symbol of an integrated social relationship: it is the seat of the temple, the market, the hall of justice, the academy of learning. Here in the city the goods of civilization are multiplied and manifolded; here is where human experience is transformed into viable signs, symbols, patterns of conduct, systems of order. Here is where the issues of civilization are focused: here, too, ritual passes on occasion into the active drama of a fully

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[21] Lewis Mumford, *The Culture of Cities* 481 (1938).

differentiated and self-conscious society [22]

Cities are places where humanity is both experienced and created. Cities are places where we live, work, make friends, and raise families. In ancient times, cities were places of safety, where societies could flourish surrounded by high city walls. Likewise, today, people live in cities to be a part of society and play a role in making it flourish.

Amicus Leo Hollis, a historian, urbanist, and author of the bestselling book *Cities Are Good for You: The Genius of the Metropolis*, says it best:

> Put simply, cities are places where strangers meet, and when that happens something extraordinary occurs. By coming together, learning to live and engage with each other on the street corner and the public spaces of the metropolis, we learn the rules of citizenship, the essential practises of how to get along. In addition, as we meet in that place, we collectively become more than the sum of our individual parts. It is only on the corner where we can build our future civil society.[23]

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[22] *Id.*

[23] Leo Hollis, *In Praise of Street Corners*, citiesaregoodforyou (April 7, 2016), https://citiesaregoodforyou.com/2016/04/07/in-praise-of-street-corners/.

Cities exist in order to create culture: "culture as the transformation of power into polity, of experience into science and philosophy, of life into the unity and significance of art: of the whole into that tissue of values that men are willing to die for rather than forswear – religion. The culture of cities is ultimately the culture of life in its higher social manifestations."[24]

The goal of a city then is perhaps the loftiest goal of all humankind, for it is both the goal *to* unite us all, and it is the goal *that* unites us all. Cities make each and every one of us the best we can possibly be, and by so doing, make humanity the best it can possibly be.

C. A City Creates Diversity and Diversity Creates a City

Shakespeare wrote: "what is the city but the people."[25] People are the foundation of the city; people are the city. Seventh-century Spanish archbishop St. Isidore of Seville authored the encyclopaedia *Etymologiae*; his entry about cities is profound, he wrote, "a city (*civitas*) is a multitude of people united by a bond of community, named for its 'citizens' (*civis*), that is, from the residents of the city...[it] is not the stones, but the inhabitants."[26] A city means people, but not just a collection of people who all happen to live in the same geographical area. A city is a community of people who share life

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[24] Lewis Mumford, *The Culture of Cities* 492 (1938).

[25] William Shakespeare, *Coriolanus* act 3, sc. 1.

[26] Stephen A. Barney et al, *The Etymologies of Isidore of Seville* 305 (2006).

together, however much or little they know about those with whom they live.

While a city is not just buildings and streets, it is not just people either, it is the coming together of these components that creates the city. The city is brought to life by the interplay between its various elements, between its streets and street vendors, its buildings and builders, its shops and shoppers. As people meet each other and are exposed to new worldviews and opinions, life is breathed into the city. As people from different backgrounds and cultures mingle together, the city becomes stronger, more vibrant, more alive. The city is a body in the same way Paul spoke of the church of Christ in his letter to the Corinthians: "For as the body is one, and hath many members, and all the members of that one body, being many, are one body."[27] Although a city, like a body, is made up of many different parts, it is only when these individual members of society come together that the city can fulfil the true measure of its creation.

Diversity creates a city, and a city creates diversity, the two are interlinked. The goal, however, is not diversity in and of itself, the goal is to make us human, and diversity is what gets us there. Aristotle taught that "a city is made up not only of many human beings but also human beings who differ in kind. No city comes into existence from those who are all alike."[28] In his book *Cities Are Good for You: The Genius of the Metropolis*, Leo Hollis writes, "the

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[27] 1 Corinthians 12:12 (King James).

[28] Aristotle, *The Politics of Aristotle* 36 (Peter L. Phillips Simpson trans., University of North Carolina Press 1997).

city is more than just a crucible where cultures come together and mix; it is a place where something completely new is formed."[29] The greatness of a city, its development, progression, and success, depends in large part on its diversity. "Cities breed innovation by putting people together with diverse views in close proximity."[30] Economist Edward Glaeser explains: "Cities bring opportunities for wealth and for the creative inspiration that can result only from face-to-face contact with others. In fact, the crush of people living in close quarters fosters the kind of collaborative creativity that has produced some of humanity's best ideas."[31]

Living in a city, and being exposed to people of all backgrounds, is one of the reasons people live in cities. The constant access to new things, different ideas, and diverse people, fuels the creation of culture and civilization. The Project for Public Spaces, a non-profit organization dedicated to building stronger communities, writes, "one of the major reasons people are attracted to a city is the simple desire to be around a wide range of people and communities."[32]

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[29] Leo Hollis, *Cities Are Good for You: The Genius of the Metropolis* 345 (2013).

[30] Lance Hosey, *Why Cities are Smarter*, Huffington Post (May 6, 2014, 6:40 pm), http://www.huffingtonpost.com/lance-hosey/urbanization-why-cities-are-smarter_b_4914383.html.

[31] *Id.*

[32] *It Takes Great Places to Create Great Cities*, Project for Public Spaces, http://www.pps.org/reference/ittakesgreatplacestocreategreatcities/. (last visited Oct 1, 2016).

Jane Jacobs, one of New York's most influential urbanists wrote, "[c]ities have the capability of providing something for everybody, only because, and only when, they are created by everybody."[33] When people are excluded from taking part in the creation of a city; when certain groups are forced to leave; when neighborhoods are disrupted and begin to degrade, the city changes, a part of what made it great is removed, and the city itself is worse off because of it. When citizens are deprived of the association and interaction with others who are different than they are, the light of the city begins to dim. When inhabitants of a community are separated and forced to move away, the very essence of the city is destroyed, and the lofty goal that the city seeks to accomplish is made that much harder to reach.

Miami is not now, nor has it ever been a perfect city; no city is. But Miami, like all other cities, strives to overcome her problems and faults, and become better. Wells Fargo prevented Miami from doing this. When Wells Fargo engaged in discriminatory lending, with the result that minority groups were forced out of communities within the city, those communities lost the benefits that come with having a diverse community, and the city as a whole was injured. While the city suffered economic damages because of Wells Fargo's actions, the economic damage may well be the least of the harm that the city felt. Wells Fargo attacked the City of Miami, choking certain communities and groups of people, thereby injuring the living body of the city,

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[33] Jane Jacobs, *The Death and Life of Great American Cities* 238 (1961).

and all members of that body. The city itself suffered; it is not as bright, as vibrant, as happy, as diverse, as alive as it once was. Or, to put it another way, it is not as much of a city as it once was.

II. THIS COURT HAS LONG RECOGNIZED INSTITUTIONAL DIVERSITY AS A COMPELLING INTEREST CENTRAL TO THE EFFECTIVE FUNCTIONING OF PUBLIC AND PRIVATE INSTITUTIONS

The fact that Wells Fargo's discriminatory practices essentially made the City of Miami less diverse means that Wells Fargo harmed one of Miami's core functions as a municipality. While this Court's jurisprudence on the constitutional value of diversity has not necessarily focused closely on municipalities, its recognition of the importance of diversity in the university and public education context is directly relevant in determining the harm that Wells Fargo has visited upon Miami.[34]

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[34] In order to have standing a "plaintiff must have suffered an "injury in fact"—an invasion of a legally protected interest which is (a) concrete and particularized... and (b) "actual or imminent, not 'conjectural' or 'hypothetical.'" *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). The Court has recognized that preventing an individual or institution from achieving its goal harms it. *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 182 (2000) (A plaintiff who wanted "to fish in the river at a specific spot" but did not because of discharge from a factory was held to have standing.). This Court has also recognized that the community is harmed under the FHA when housing discrimination occurs. *Trafficante*

A. Institutionally, Diversity is Central to The Pursuit of Academic Freedom

This Court has a long tradition of recognizing the needs of an institution to pursue its goals. Academic freedom has been long held to be a central goal of a university *See Sweezy v. State of N.H. by Wyman*, 354 U.S. 234, 250 (1957). Preventing a university from achieving its goal of academic freedom harms it in the same way as reducing a city's diversity visits upon it the sort of harm sufficient to grant it standing to sue.

Whether an institution has suffered a cognizable harm for purposes of Article III standing turns on the question of the fundamental purpose of the institution. Just as the purpose of a city is to protect its citizens and improve their lives, the purpose of a university is to facilitate academic freedom and the free exchange of ideas, and thereby improve society's knowledge. The Court has held time and time again

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v. Metropolitan Life Ins. Co., 409 U.S. 205, 211 (1972) ("The person on the landlord's blacklist is not the only victim of discriminatory housing practices; it ... 'the whole community.'"). The Court has also recognized that certain functions are so central that taking them away from an institution harms them. "[A]n association has standing to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Int'l Union, United Auto., Aerospace & Agr. Implement Workers of Am. v. Brock*, 477 U.S. 274, 282, (1986) (citing *Hunt v. Washington State Apple Advertising Comm'n*, 432 U.S. 333, 343 (1977)).

that, because the fundamental purpose of these institutions is the unfettered pursuit of knowledge, they have a vested interest in diversity.

Higher education has existed in one form or another for millennia, but education in a university setting began to emerge in the twelfth century.[35] The institutions arose spontaneously from a diverse body of knowledge, including the works of Aristotle, Euclid, Ptolemy, and numerous Arab scholars.[36] Bologna, widely considered the first and most influential university, organically formed after influential professors congregated there and students followed.[37] Even at that early stage, academic freedom became an important goal of these institutions. In 1158, Emperor Fredrick issued the Constitutio Habita, which protected all scholars travelling for their studies from the interference of political authorities.[38]

The best definition of a university, that respects the long history of the institutions, is "a school of knowledge of every kind, consisting of teachers and learners from every quarter... in its essence, a place for the communication and circulation of thought, by means of personal intercourse, through a wide extent of the country."[39] The university is essentially one

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[35] Charles Homer Haskins, *The Rise of Universities* 4 (Cornell University Press 1923).

[36] *Id.* at 5.

[37] *Id.* 4-8.

[38] Jos. M. M. Hermans & Marc Nelissen, *Charters of Foundation and Early Documents of the Universities of the Coimbra Group* 30 (Leuven University Press 2005).

[39] John Henry Cardinal Newman, *Rise and Progress of Universities and Benedictine Essays* 6 (James Tolhurst DD, Birmingham Millennium Oratory Edition 2001) (1782).

body that facilitates the spread of knowledge. Academic freedom became the principle that allowed communication and circulation of thought between teachers and learners from every quarter. The importance of academic freedom became encoded in *The Magna Charta Universitatum*, a document that was signed by 388 rectors and heads of universities from all over the world. [40] It established four fundamental principles for universities:

> 1) The university is an autonomous institution... [that] must be morally and intellectually independent of all political authority and economic power. 2) Teaching and research in universities must be inseparable... 3) Freedom in research and training is the fundamental principle... [and universities must] reject[] intolerance and [be] always open to dialogue... 4) [I]ts constant care is to attain universal knowledge; to fulfil its vocation it transcends geographical and political fronteirs, and affirms the vital need for different cultures to know and influence each other.[41]

To achieve these four central goals of universities, the document lists four means:

> 1) ... [F]reedom must be made available to all members of a university community. 2) Recruitment

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[40] Observatory Magna Charta Universitatum, *The Magna Charta Universitatum*, (1988).
[41] *Id.*

> of teachers, and regulation of their status, must obey the principle that teaching and research in universities must be inseparable. 3) Each university must ... ensure that its students' freedoms are safeguarded, and that they enjoy concessions in which they can acquire the culture and training which it is their purpose to possess. 4) Universities... regard the mutual exchange of information and documentation, and frequent joint projects for the advancement of learning, as essential to the steady progress of knowledge.[42]

The Court itself has recognized that "[t]he essentiality of freedom in the community of American universities is almost self-evident." *Sweezy*, 354 U.S. at 250. In America, the chief means to pursue the goal of academic freedom has been diversity. By having a diverse university, students are able to exchange ideas across different cultures and acquire a more enriched education. As the Court said,

> The atmosphere of "speculation, experiment and creation"—so essential to the quality of higher education—is widely believed to be promoted by a diverse student body. As the Court noted in *Keyishian*, it is not too much to say that the "nation's future depends upon leaders trained

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[42] *Id.*

> through wide exposure" to the ideas and mores of students as diverse as this Nation of many peoples.

Regents of University of California v. Bakke, 438 U.S. 265, 312–13 (1978).

B. Diversity is a Compelling Interest Central to the Functioning of Educational Institutions

Universities have a history of prioritizing diversity to improve the educational environment of their institutions; many have adopted specific policies to ensure a diverse student body, similar to the policies cities have adopted for diversity.[43] These universities understand that policies that improve diversity, support essential educational goals including, but not limited to, learning from dialogue across difference and that racial and ethnic diversity contribute to the "robust exchange of ideas on campus."[44] There is now significant evidence that shows enhanced learning outcomes for students in diverse educational contexts, increased intercultural and cross-racial knowledge, understanding, and empathy, better preparation for employment in the

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[43] These policies have been varied, and one university had "intensified its outreach efforts to African–American and Hispanic applicants, created new scholarship programs, opened new regional admissions centers, increased its recruitment budget, and organized recruitment events, and had spent seven years attempting to achieve its compelling interest using race-neutral holistic review without success" before they settled on a system that explicitly used race as an admission factor. *Fisher v. Univ. of Tex. at Austin*, 136 S. Ct. 2198 (2016).

[44] American Council on Education, *Does Diversity Make a Difference* 3 (2000).

global economy, and increased "democratic outcomes," including engagement in political issues and participation in democratic processes.[45]

This Court has not only agreed that diversity makes a community stronger, they have held that a University's interest in diversity is compelling enough to overcome strict scrutiny review. It was *Brown v. Board of Education* that first recognized the damage that is caused by separating races by granting "a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone." *Brown v. Board of Education*, 347 U.S. 483, 494 (1954). The Court went on to identify that a "policy aspires to 'achieve that diversity which has the potential to enrich everyone's education and thus make a law school class stronger than the sum of its parts;' the policy does not restrict the types of diversity contributions eligible for 'substantial weight' in the admissions process, but instead recognizes 'many possible bases for diversity admissions.'" *Grutter v. Bollinger*, 539 U.S. 306, 315–16 (2003) (citing *Regents of Univ. of California v. Bakke*, at 188). These Universities made it a priority to seek "a mix of students with varying backgrounds and experiences who will respect and learn from each other." *Id.* at 314. It went on to say "[t]hese benefits are not theoretical but real, as major American businesses have made clear that the skills needed in today's increasingly global marketplace can only be

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[45] Amy Stuart Wells, et al, *How Racially Diverse Schools and Classrooms Can Benefit All Students* (February 9, 2016), https://tcf.org/content/report/how-racially-diverse-schools-and-classrooms-can-benefit-all-students/.

developed through exposure to widely diverse people, cultures, ideas, and viewpoints." *Id.* at 330. Finally, the Court has found that "[i]n seeking the "right to select those students who will contribute the most to the 'robust exchange of ideas,'" a university seeks "to achieve a goal that is of paramount importance in the fulfillment of its mission." Both "tradition and experience lend support to the view that the contribution of diversity is substantial." *Id.* at 324. Diversity is essential to a well-rounded educational experience, which the Court recognizes makes universities and other institutions stronger. Cities also benefit from diversity, because diversity is a tool that the city can use to cultivate real benefits that allows its citizens to flourish—a crucial part of its fundamental purpose.

It is not only higher education where the Court has recognized that diversity furthers an institution's purpose. The Court has acknowledged that "[t]he Nation's schools strive to teach that our strength comes from people of different races, creeds, and cultures uniting in commitment to the freedom of all." *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist., No. 1*, 551 U.S. 701, 782, (2007) (Kennedy, J., concurring). The Court went on to state that "[i]f school authorities are concerned that the student-body compositions of certain schools interfere with the objective of offering an equal educational opportunity to all of their students, they are free to devise race-conscious measures to address the problem in a general way and without treating each student in different fashion solely on the basis of a systematic, individual typing by race." Id. at 788–89.

Other institutions have also pursued the goal of diversity.[46] Members of the Court have applied a similar diversity rationale to public primary and secondary schools, reasoning that "a compelling interest exists in avoiding racial isolation, an interest that a school district in its discretion and expertise may choose to pursue" *Parents Involved in Cmty. Sch.* 551 U.S. at 797. Diversity is essentially a powerful tool that any institution can use to achieve a wide variety of goals. To deprive Miami of a critical tool to improve its own livelihood harms it gravely.

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[46] Employers frequently implement affirmative action hiring programs to improve the diversity of their workplace. Employers have found that diversity leads to greater access to different perspectives and sources of information, greater understanding of customers, better communication with customers, increased legitimacy, improved performance, improved employer image, improved brand awareness, improved ability to respond and change through creativity and innovation, innovative approaches to products, and makes customers feel at home. Employers Network for Equality & Inclusion, *The Business Case for Diversity* (last visited Oct. 3, 2016), http://www.enei.org.uk/pages/the-business-case-for-diversity-.html. An affirmative action plan that was collectively bargained by an employer and a union and that reserved for black employees 50 percent of the openings in an in-plant craft training program until the percentage of black craft workers in plant was commensurate with percentage of blacks in local labor force did not violate Title VII's prohibition against racial discrimination; purposes of the plan mirrored those of the statute, the plan did not unnecessarily trammel the interests of white employees, and the plan was a temporary measure, not intended to maintain racial balance, but simply to eliminate a manifest racial imbalance. *United Steelworkers of Am., AFL-CIO-CLC v. Weber*, 443 U.S. 193, 197-208 (1979).

C. Diversity is Similarly a Compelling Interest Central to the Functioning of Municipalities

Diversity is a compelling interest in cities as well as universities. The Court has allowed the government to implement an affirmative action hiring program based on "its long-term goal [] to attain a work force whose composition reflected the proportion of minorities and women in the area labor force." *Johnson v. Transp. Agency, Santa Clara Cty., Cal.*, 480 U.S. 616, 621–22 (1987). The lower Courts have applied the rationale in *Johnson* to a host of cases which recognized that race is a compelling interest and approved plans that gave remedial promotions to minorities in an effort to increase the diversity of a police force. *See Edwards v. City of Houston*, 37 F.3d 1097, 1102 (5th Cir. 1994). While these cases partly rely on remedying unlawful treatment of racial or ethnic groups subject to discrimination, there was a recognition that institutions value diversity and are often voluntarily implementing these affirmative action programs to reap the benefits. *See U.S. v. Paradise*, 480 U.S. 149, 166 (1987); *Johnson*, 480 U.S. at 621–22. Just as diversity is a compelling interest to a university, so too it is vital to the healthy development and maintenance of a city.

III. LACK OF DIVERSITY HARMS THE PHYSICAL AND MENTAL HEALTH OF RESIDENTS AND DESTROYS THE CITY'S COMMUNAL SPIRIT

Miami is known for its diversity and devotes substantial time and money to cultivating a healthy

diverse environment.[47] Miami's devotion to diversity is demonstrated in part through the Community and Economic Development Department, a city agency, that uses federal and state grant money to achieve this objective.[48] The Mayor of Miami describes Miami as a city that has "embraced all nationalities, all colors, [and] all cultures."[49] Miami prides itself on being one of the most diverse cities in America.[50]

The City's interest in fair housing is clear. In the absence of fair housing, the city breaks into homogeneous, non-diverse, segregated communities, A wealth of social science data demonstrates how dangerous homogeneity can be to the city's well being.

A. Racially Segregated Communities Experience Poorer Health Outcomes and Higher Crime Rates.

Generally, lower levels of wealth and home ownership decrease health status, [51] including

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[47] *See Mission Statement of the City of Miami Community and Economic Development Department* http://www.miamigov.com/communitydevelopment/pages/about_us/("assists in creating a viable urban community for the most needy persons in our city, while reducing poverty and embracing diversity, assisting with economic development, and improving the overall quality of life.").

[48] *Id.*

[49] *City of Miami – 2016 State of the City*, (Sep. 23, 2016), https://www.youtube.com/watch?v=RlQwGETtftc.

[50] *Id.*

[51] Dolores Acevedo-Garcia & Theresa Osypuk, *Impacts of Housing and Neighborhoods on Health: Pathways, Racial/Ethnic Disparities, and Policy Directions, in*

behavioral health, mental health, physical health, [52] and mortality.[53]

Segregated housing has been linked to lower health outcomes for citizens of various races. [54] Greater levels of segregation are associated, *inter alia*, with poorer breast cancer care for both black and white patients,[55] increased risk of heart disease and stroke deaths, [56] increased incidence of influenza,[57] earlier age of first sexual intercourse,[58] and lower birth weight infants.[59]

Segregation: The Rising Costs for America 197, 205 (James Carr & Nandinee Kutty eds., 2008).

[52] *Id.* at 206-07 (individual level factors were controlled).

[53] *Id.* at 208.

[54] *Id.* at 205-27; *see generally* Sewell, *Opening the Black Box of Segregation: Real Estate and Racial Health Disparities, in Race and Real Estate* 87, 90-99 (Adrienne Brown & Valerie Smith eds., 2016) (provides an overview of the relevant literature on this issue).

[55] Jennifer Haas et al., *Racial Segregation and Disparities in Breast Cancer Care and Mortality*, 113 Cancer 2166-72.S (2008).

[56] Sophia Greer et al, *Metropolitan Racial Residential Segregation and Cardiovascular Mortality: Exploring Pathways*, 91 J. of Urban Health 499, 499 (2014).

[57] Kate Strully, *Health Care Segregation and Race Disparities: The Case of Nursing Homes and Seasonal Influenza Vaccinations*, 52 J. of Health & Soc. Behavior 510, 510 (2011).

[58] Katie Biello et al., *Racial differences in Age at First Sexual Intercourse: Residential Racial Segregation and the Black-White Disparity Among U.S. Adolescents*, 128 Pub. Health Reports 23, 23 (2013).

[59] Sue C. Grady et al., *Mediating Medical Risk Factors in the Residential Segregation and low birth weight relationship by race in New York City*, 14 Health & Place 661, 661 (2008).

Particularly vulnerable to the harm arising out of segregated housing are black citizens. Black people face the highest degrees of segregation among any racial or ethnic group in the United States.[60] Research shows that racial residential segregation is a fundamental cause of health disparities between black and white Americans because racial segregation affects socioeconomic conditions in communities, neighborhoods, and households.[61]

An increase in the level of neighborhood economic status corresponds with a significant decrease in mortality rate across all color lines and income differences,[62] which is particularly relevant in this case given that Wells Fargo's practices led to

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[60] Douglas S. Massey & Nancy A. Denton, *American Apartheid* 12, (1993); Acevedo-Garcia & Osypuk, *supra* note 51, at 205 ("Studies based on data from the American Housing Survey found that after age, income, education, and location had been controlled for, blacks were more likely than whites to live in inadequate housing").

[61] David R. Williams & Chiquita Collins, *Racial Residential Segregation: A Fundamental Cause of Racial Disparities in Health*.116 Viewpoint 404, 405 (2001); Sandi Pruitt et al., *Residential Racial Segregation and Mortality Among Black, White, and Hispanic Urban Breast Cancer Patients in Texas, 1995 to 2009*, Cancer 1845, 1852 (2015) (Segregation contributes in part to blacks dying more frequently of breast cancer.); Joseph Sudano et al., *Neighborhood Racial Residential Segregation and Changes in Health or Death Among Older Adults*, 19 Health Place 80, 85 (2013); Dara Mendez et al., *Institutional Racism, Neighborhood Factors, Stress and Preterm Birth*, 19 Ethnicity & Health 479, 479 (2014) ("Residential redlining as a form of institutional racism and neighborhood characteristic may be important for understanding racial/ethnic disparities in pregnancy and preterm birth").

[62] Nicolle Mode, *Race, Neighborhood Economic Status, Income Inequality and Mortality*, 11 PLoS ONE 7, 7 (2016).

decreased economic status within the affected neighborhoods in Miami.

Segregated neighborhoods also lead to poor health outcomes because they are particularly vulnerable to being food deserts. Food deserts are "poor urban areas, where residents cannot buy affordable, healthy food."[63] Economic segregation, *inter alia*, appears to be the cause of these food deserts.[64] As a result of the creation of food deserts, residents tend to be cut off from access to healthy food, which has a negative affect on health.[65]

Lastly, because segregated communities by definition are more racially isolated, they tend to breed greater levels of intolerance and discrimination, leading to increased levels of urban violence.[66] Inner city, minority communities that

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[63] Renee Walker et al., *Disparities and access to healthy food in the United States: A review of food deserts literature*, 16 Health & Place 876, 876 (2010).

[64] *See id.* at 877.

[65] *Id.* at 879; LaVonna Lewis et al., *African Americans' Access to Healthy Food Options in South Los Angeles Restaurants*, 95 Research and Practice 688, 672 (2005)("Poorer neighborhoods with a higher percentage of African Americans have fewer choices and more fast food restaurants"); Jason Block et al., *Fast Food Race/Ethnicity and Income*, 27 Am. J. Prev. Med. 211, 214-215 (2004) (the prevalence of fast food restaurants in black and low-income neighborhoods helps to explain high rates of obesity in these areas).

[66] *See e.g.* Eduardo Bonilla Silva, *The Social Psychology of White Habitus* ("whites segregated lifestyles psychologically leads them to develop positive views about themselves and negative views about racial others") 32 Critical Psychol. 229, 229. (2011); George Yancey, *Interracial Contact & Soc. Change* 61 (2007) ("[interracial contact matters....mostly [for] whites and only if

exhibit high rates of crime and violence do so because of social and economic conditions not experienced in mixed race and predominantly white neighborhoods.[67]

Wells Fargo's predatory lending practices have also compromised Miami's position as a protector of its immigrant citizens, by making it more difficult for Black and Latino immigrants to integrate into the city. This not only deprives Miami of the capacity to protect its citizenry, but it also deprives Miami of the benefits that flow specifically from increased immigration. Growing racial diversity over the last decade, due to increased Hispanic immigration, has contributed to the significant decline in homicide rates in U.S. cities.[68] Studies have shown that newly

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the contact is not sporadic and comes from several different sources]"), Elizabeth Griffiths, *Race, Space, and the Spread of Violence Across the City*, 60 Soc. Problems 419, 419 (2013) (citing Sampson and Wilson 1995 and Wilson 1987); Robert Sampson, *Urban Black Violence: The Effect of Male Joblessness and Family Disruption*, 93 Am. J. of Soc. 348-83 (1987) (violence in urban communities has been linked to structural economic deprivations, irrespective of the race of the individuals involved.); Elizabeth Reed et al., *Experiences of Racial Discrimination & Relation to Violence Perpetration and Gang Involvement Among a Sample of Urban African American Men*, 12 J. Immigr. Minority Health 319-26 (2010) (racial discrimination has been linked to intimate partner violence and street violence involvement.)

[67] Griffiths, *supra* note 66 at 419.

[68] Karen Parker & Richard Stanfield, *The Change Urban Landscape: Interconnections Between Racial/Ethnic Segregation and Exposure in the Study of Race-Specific Violence Over Time*, 105 Am. J. Pub. Health 1796, 1796 (2015); Jacob Stowell et al., *Immigration and the Recent Violent Crime Drop in the United States: A Pooled Cross-sectional Time Series Analysis of Metropolitan Areas*, 47 Criminology 889, 889 (2009);

arriving immigrants help to break the color line and ease racial tensions, by breaking the "2-group model" of race relations and creating more opportunity for interracial contact.[69]

B. Racially Segregated Communities Experience Higher Levels of Racial Tensions and Tend to Hold Stereotypical or Hostile Views of Members of Other Races

In a post-apartheid, post-Jim Crow era, we often do not sufficiently appreciate that, given the opportunity, most Americans, including many of the citizens of Miami, have a preference for living in diverse communities.[70]

Robert Sampson, *Rethinking Crime and Immigration*, 7 Contexts 28, 29 (2008) (research shows "a significantly lower rate of violence among Mexican-American [immigrants] compared to blacks and whites."); Tim Wadsworth, *Is Immigration Responsible for the Crime Drop? An Assessment of the Influence of Immigration on Changes in Violent Crime Between 1990 and 2000*, 91 Soc. Sci. Q. 531, 531 (2010) ("growth in immigration may have been responsible for part of the precipitous crime drop of the 1990s").

[69] Parker & Stanfield, *supra* note 68 at 1803 (2015).

[70] *See* Wendy Wang et al., *Americans say They Like Diverse Communities; Election, Census Trends Suggest Otherwise*, The Pew Research Center (Sep. 12, 2016 1:12PM), http://www.pewsocialtrends.org/2008/12/02/americans-say-they-like-diverse-communities-election-census-trends-suggest-otherwise/ (Most Americans say they prefer living in politically, racially, religiously or economically diverse communities.); *Allstate/National Journal: Heartland Monitor Poll XXV* 1, 9 (2016), http://heartlandmonitor.com/wp-content/uploads/2016/01/FTI-Allstate-NJ-Heartland-Poll-XXV-Findings-Memo-Jan-11-at-4pm-ET.pdf (A majority surveyed indicated that immigration has had a positive or neutral affect

It is a fairly uncontroversial proposition that "[i]nter-racial contact matters."[71] In fact, much of the reasoning used to support the Fair Housing Act hinges on the idea that interracial contact eases racial tensions.[72]

Indeed, studies have shown that multiculturalism yields many tangible results in the everyday lives of people.[73] Contemporary social science research shows that prejudice against minority groups decreases

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on American culture overall and a majority indicated that it has had a positive or neutral affect on their community.); *see generally*, Massey & Denton, *supra* note 60 (Because of housing discrimination practices, some cities in the US exhibit racial segregation comparable to that of apartheid South Africa.).

[71] Yancey, *supra* note 66 at 61 (2007).

[72] Jean Eberhart Dubofsky, *Fair Housing: A Legislative History And A Perspective* , 8 Washburn L.J. 149, 154 (1968) ("At a time when riots threatened to close down every major city in the country and black militants preached the basic indecency of white America, a fair housing law could ease the frustration of blacks and the role of the law as a teacher might overcome the ignorance and fear of whites which previously had blocked attempts to lower a black-white barrier.").

[73] *See* Thao Le, *The Relationship Between School Multiculturalism and Interpersonal Violence: An Exploratory Study*, 81 J. of Sch. Health 688, 688 (2011) ("School multiculturalism is an important protective factor against youth violence by facilitating positive peer relationships and community engagement among youth"); Bonilla-Silva, *supra* note 66 at 229. (2011) ("whites' segregated lifestyles psychologically leads them to develop positive views about themselves and negative views about racial others"); Yancey, *supra* note 66 at 61 (2007) ("[interracial contact matters....mostly [for] whites and only if the contact is not sporadic and comes from several different sources]").

when contact with the majority group increases.[74] Research also shows that members of racially integrated communities display higher levels of interracial tolerance and understanding,[75] and that "stereotypes can be overcome with relatively superficial contact."[76]

The amount of contact that Whites have with Blacks dictates the degree to which Whites hold positive views about Blacks. [77] Furthermore, "interracial friendship is among the strongest predictors of Blacks' racial attitudes" about non-Blacks.[78] People of color with interracial networks are more likely to enjoy educational success.[79] "Self-selection is an insufficient answer as to why people of color with interracial social networks are more likely to enjoy educational success."[80] It is likely that the

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[74] Jeffrey Dixon & Michael Rosenbaum, *Nice to Know You? Testing Contact, Cultural, and Group Threat Theories of Anti-Black and Anti-Hispanic Stereotypes*, 85 Soc. Sci. Q. 257, 260 (2004) (citing Gordon Allport, The Nature of Prejudice (Doubleday 1979) (1954)); *But see* Gina Spitz, *Segregated Integration in a Racially Diverse Milwaukee Neighborhood*, 10 J. of Ethnographic & Qualitative Res. 53, 53 (2015) (racial integration causes more hostility between racial groups).

[75] Thomas Pettigrew, *Intergroup Contact Theory*, 49 Ann. Rev. Psychol. 65-85 (1998); Albert Hunter, Symbolic Communities: The Persistence and Changes of Chicago's Local Communities (1974).

[76] Dixon & Rosenbaum, *supra* note 74 at 257.

[77] Christina Mancini et al., *Whites' Perceptions About Black Criminality: A Closer Look at the Contact Hypothesis*, 61 Crime & Delinquency 996, 996 (2012).

[78] Christopher Ellison & Daniel Powers, *The Contact Hypothesis and Racial Attitudes*, 75 Soc. Sci. Q. 385, 385 (1994)

[79] Yancey, *supra* note 66 at 108 (2007).

[80] Yancey, *supra* note 66 at 108 (2007).

social capital derived from that contact provides blacks with the tools necessary for greater educational success.[81]

Studies have shown that "whites who live in relatively high multiracial areas [are] more likely to hold pro-immigrant attitudes."[82] "Persons who report Latino friendships are less inclined to accept negative assessments of the consequences of immigration, more prone to believe in the positive effects, and less willing to express support for immigration reform that reduces the number of immigrants allowed to enter the United States."[83]

This goes to show that a city, as diverse as Miami, is necessarily harmed when an actor intentionally constructs impediments to racial integration.

CONCLUSION

Writing about the Montgomery, Alabama bus boycott Dr. Martin Luther King said that the purpose of racial integration is "reconciliation, redemption, the creation of a beloved community."[84] King's call for the beloved community was (and

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[81] *Id.*

[82] Justin Berg, *Whites' Attitudes Towards Immigrants and Immigration Policy: Are Multiracial Individuals a Source of Group Threat or Intergroup Contact?*, 47 Soc. Focus 194, 212 (2014).

[83] Christopher Ellison et al., *The Contact Hypothesis and Attitudes Toward Latinos in the United States*, 92 Soc. Sci. Q. 938, 952 (2011).

[84] Martin Luther King, Jr., *Facing the Challenge of a New Age*, collected in The Papers of Martin Luther King, Jr. Volume 3: Birth of a New Age (December 1955-December 1956).

remains) an invitation to enter into what American philosopher and theologian Reinhold Niebuhr's imagined as a covenant to build and maintain a community of loving, just, and peaceable relationships.[85] Undoubtedly, in the daily hustle and bustle of life in a modern metropolis, city managers, administrators and other officials worry less about Niebuhr's communal covenant and more about keeping transit on time, allocating police resources, or scheduling trash pickup. But, though their daily or hourly routines may be taken up by such prosaic concerns as transportation, policing, or sanitation, it still remains that at the end of the day administrators, and officials all work toward a single overriding purpose: to maintain a wholesome community, to nurture a healthy city. What is clear by now is that Wells Fargo's actions harmed Miami's economy and the financial wellbeing of some of the city's most economically vulnerable residents. What should be equally clear is that, when it dislocated and destroyed neighborhoods, Wells Fargo also harmed the very physical essence of the City of Miami, and that this physical loss is no less concrete, no less direct, and no less tangible than any economic harm Walls Fargo visited upon Miami and its people.

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[85] Reinhold Niebuhr, *Nature and Destiny of Man*, Volume I 178-264 (1964).

Respectfully Submitted,

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